

(31,722)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 999

PAN AMERICAN PETROLEUM & TRANSPORT
COMPANY AND PAN AMERICAN PETROLEUM
COMPANY, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT

VOLUME II

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No. 4651

**United States
Circuit Court of Appeals**

For the Ninth Circuit.

Transcript of Record.

(IN THREE VOLUMES.)

PAN AMERICAN PETROLEUM COMPANY, a
Corporation, and PAN AMERICAN PE-
TROLEUM AND TRANSPORT COM-
PANY, a Corporation,

Appellants and Cross-Appellees,

vs.

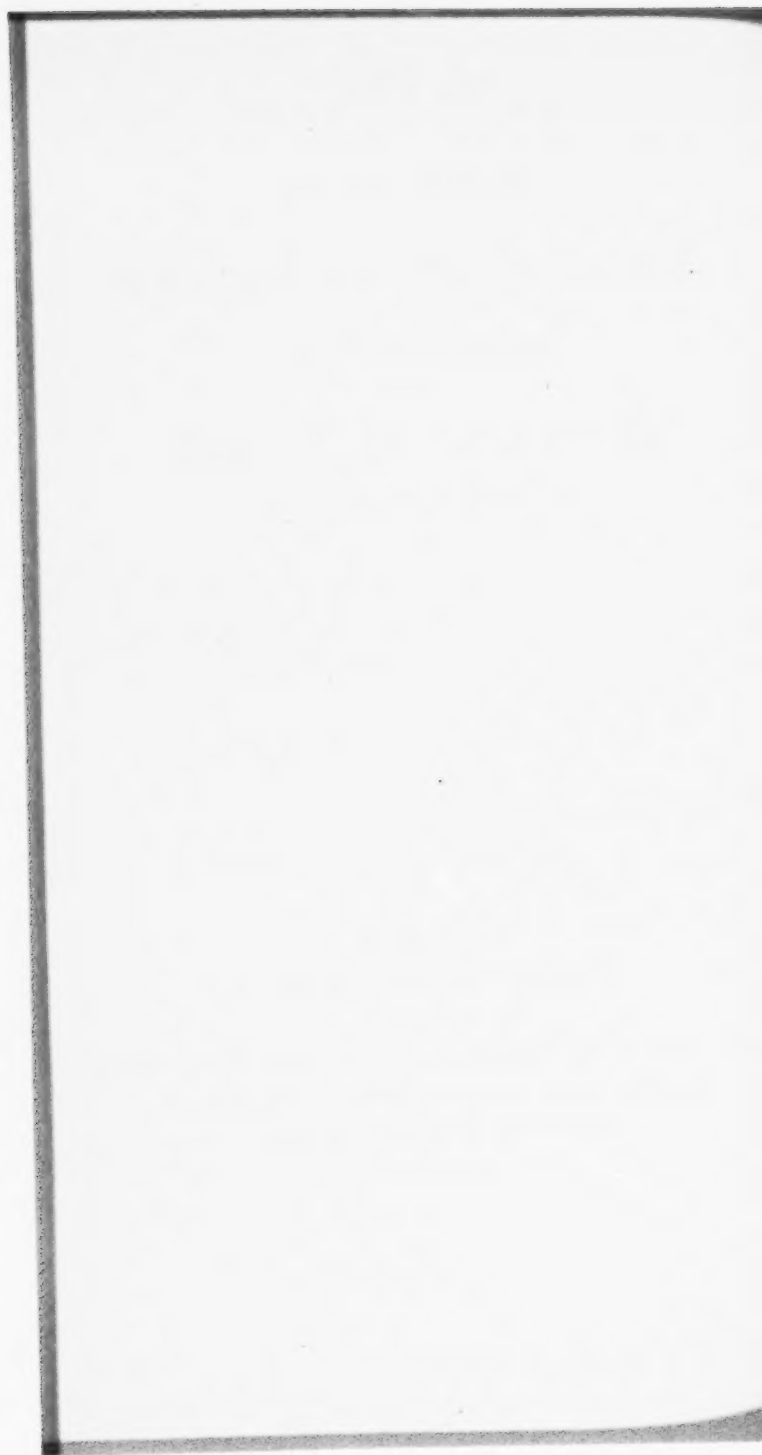
UNITED STATES OF AMERICA,

Appellee and Cross-Appellant.

VOLUME II.

(Pages 481 to 1024, Inclusive.)

Upon Appeal and Cross-Appeal from the United States
District Court for the Southern District of
California, Northern Division.



(Testimony of E. C. Finney.)

the Army and Navy in connection with the promotion and manufacture and production of helium gas in Texas with experimental plants dealing with helium; experts from the Bureau of Mines performed all or a part of the work and the Interior Department was reimbursed by a transfer of funds from the Navy. In Alaska there was for a year or two a Navy coal mine operated in experiment to see whether coal fit for Navy use could be found there; there was a naval officer on that work for awhile but part of the time that work was performed by officers of the Interior for the Navy. The Interior Department co-operates with other departments than the War and Navy Departments; its officials have performed service for the Department of Justice, to identify claims and lands. There is more or less cooperation between the various executive departments. For the Interior Department the Agricultural Department has sent men out to examine reclamation projects and make reports thereon.

Secretary Fall left Washington for the west on July 31, 1921; before he left he and the witness had a conversation from which the witness learned that the Secretary was to take up oil matters out on the Pacific Coast; this conversation was between the Secretary and the witness or among the Secretary, Dr. Bain and the witness; the Secretary stated that he was going to confer with some oil men on the Coast with respect to the disposition of royalty oil; Secretary Fall was absent from

(Testimony of E. C. Finney.)

Washington on that trip until late in October.

There was thereupon read in evidence as Defendants' Exhibit "P" letter dated Mitchell, Nebraska, September 24, 1921, from the Secretary of the Interior to the President of the United States, so much thereof as relates to naval oil reserve matters reading as follows: [265—187]

DEFENDANTS' EXHIBIT "P."

My dear Mr. President:

"As I am now shortly approaching the termination of the inspection trip which I had mapped out before leaving Washington, I will, as shortly as possible, give you some idea of what I have been doing.

"I arrived at San Francisco on August 4th, direct from Washington, where I at once summoned in consultation Commander Landis who has been representing the Navy in the matter of Naval Oil Reserves. I had Mr. Campbell, the representative of the Bureau of Mines who checks our oil in the Bakersfield District, and later arranged a conference between Commander Landis, Campbell and myself. I then went into consultation with Mr. Paul Shoup, and other representatives of the large operators, taking up the question of providing storage for oil for the Navy. Of course, I made no definite or even tentative contract but did secure a promise from the operators, particularly from Mr. Shoup, of the Pacific Oil Company, one of the very large producers, to the effect that

(Testimony of E. C. Finney.)

his company would enter into a contract with the United States to construct two large concrete reservoirs on the California Coast, at places to be selected by the Navy, each of seven hundred fifty thousand barrel capacity, adjacent to oil lines where ships could be readily and easily cargoed.

"These tanks will be constructed for the United States to be paid for in oil at current prices, whenever we may desire to enter into a contract.

"Of course the price of construction to be agreed upon prior to contract.

"I also had an offer from one or two other companies to do the same thing, so we have the assurance that the Navy can at any time when it may notify me of its desire to do so, secure storage capacity for at least one million five hundred thousand barrels at one or more places on the coast, the location to be selected by them.

"This will obviate the necessity of asking Congress for authority to expend money in such construction as we have now authority to exchange crude oil for fuel oil and the companies will construct the tanks and fill them with fuel oil, we paying in crude oil for both fuel oil and the tanks in which it is stored.

"With very high regard, I am

"Sincerely yours,

"ALBERT B. FALL."

[266—188]

As regards letter dated August 27, 1921, from the American Oil Engineering Corporation, signed

(Testimony of E. C. Finney.)

by B. T. Dyer, Plaintiff's Exhibit 55, referred to on the direct examination, witness testified that he has not a copy of the letter from Mr. Dyer to Secretary of the Navy Daniels dated September 27, 1920, and as to whether there was any action taken by Secretary Daniels or anybody else in the Navy Department on the 1920 proposition of the American Oil Engineering Company referred to in said Exhibit 55 Mr. Finney can only say that he does not know of any leases or contracts that were made by Secretary Daniels and that he knows there had been no leases made and no disposition of the land, and the matter was still open, when the said Exhibit 55 was before the witness in the fall of 1921. When Judge Finney wrote his memorandum of October 22, 1921, to Secretary Fall (Exhibit 56), in which he stated that in his opinion "the plan outlined in the letter of the American Oil Engineering Corporation is not feasible or advisable," he does not recall that he had taken that matter up with naval officials at all; and after he sent up to Secretary Fall the American Oil Engineering Corporation's letter with his memorandum of October 22, 1921 (Exhibit 56) he does not know what disposition was made of it.

Thereupon counsel for the plaintiff in open court in response to an inquiry by counsel for the defendants stated that they had not been able to find the inclosures with Plaintiff's Exhibit 55 and also that they have not been able to find the letter

(Testimony of E. C. Finney.)

from the writer of that exhibit sent to the Secretary of the Navy in 1920.

Referring to the conference on the subject of naval petroleum reserves in the office of Secretary Fall in October 1921, about which he testified on direct, Secretary Finney on cross-examination stated that he cannot fix the exact date of the conference but it was in the latter part of October, some time after the 15th, subsequent to the time when the Secretary returned to Washington, which was on October 17th; the witness went to the Secretary's office while the conference was in progress carrying a map there of the two reserves which the Secretary desired to have and he may have been there a few minutes; there were present Admiral Robison, Dr. Bain, Mr. Ambrose and Secretary Fall.

Some time in November, 1921, Mr. Finney learned of the plan to [267—189] have Dr. Bain visit the west and take up with oil companies the matter of the possibility of exchanging royalty oil for fuel oil and storage in tanks to be provided. It is a little hard for him to remember when he learned of the plan to lease and drill the remaining unleased lands in Reserve No. 2; he always has been of opinion that No. 2 was an impossible reserve because of the large number of privately owned claims and wells that exist there; he has been to the reserve personally and also talked with Bureau of Mines officials and with Dr. Mendenhall with respect to that reserve at various times and

(Testimony of E. C. Finney.)

has never entertained the opinion that No. 2 was a feasible reserve, so it is hard to tell when he first got Secretary Fall's point of view or the Bureau of Mines' point of view; he knew of the telegrams of November 14, 1921, sent to the various permittees or lessees in Naval Reserve No. 2 shortly after they were sent out, being advised by the Secretary or his assistant, Mr. Safford, whose initials appear on them; that was necessary in order that he would know what to do when applications came in from these companies for the additional leases; he does not think that at the time he knew that the sending out of those telegrams was pursuant to the policy that was advised by the Bureau of Mines and agreed upon by the representatives of the Navy at the time of the October conference but he thinks that he knew it had been determined to lease up the preference right claims in No. 2 in order to save the oil from being drained out by private operators and to provide oil for the contemplated exchange; he must have known that much; he cannot recall all of the details and does not think he was advised as to all of them.

Regarding the leases which were given to the various lessees named in his direct, following the sending out of the November 14, 1921, telegrams, there was no advertising for bids for those leases; they were all issued to people who had either made mining locations or acquired them by purchase and who had been given a preference right to the lease or producing well under Section 18 of

(Testimony of E. C. Finney.)

the Leasing Act of February 25, 1920, which act further provided that if any other lands within the claim were leased the owner of the wells and the location should have the preference; all of those leases were upon the Interior Department's regulation royalties, set forth in regulations promulgated by the Department of the Interior subsequent to the enactment [268—190] of the Act of February 25, 1920, and the royalties prescribed in those regulations, for leases to be granted under the provisions of that act only, are what in this case have been referred to as "regulation royalties." These royalties are applicable to relief leases under Section 18 given under these preference rights, and the regulations contain other royalties as to other kinds of land; the regulations thus promulgated really provide for a higher royalty than the minimum provided for in the act of February 25, 1920.

Dr. H. Foster Bain was Director of the Bureau of Mines during all of the time being inquired about in this case and he was in that bureau under the Wilson administration part of a year; in that bureau there is a division designated as the Petroleum Division, of which the A. W. Ambrose mentioned in the witness' testimony was chief; Mr. Ambrose had been an employee of the department for a number of years prior to 1921, having had experience as an employee in the field and being then later called to the Washington office where he served for several years; prior to this trial Mr.

(Testimony of E. C. Finney.)

Ambrose voluntarily resigned to go into private employment; Dr. Bain is still Director of the Bureau of Mines.

As to the applications of the Pan American and the United Midway Company, or the latter company's assignee, Ramsey, for relief from the alleged burden of the royalty on their July, 1921, leases in Section 1, regarding which Mr. Finney testified on his direct examination, the first he heard of the matter was when there came to his office in Washington Mr. J. J. Staygers, an attorney of that city, who spoke for the United Midway Company, and Mr. J. J. Carter, who spoke for the Pan American Company; the latter had formerly been in the Interior Department and Mr. Finney had known him for many years; these gentlemen, in a conversation with Mr. Finney in his office, presented to him orally the grounds upon which they claimed that their principals were entitled to the relief they asked, stating the number of wells that had been drilled, the approximate production per well, which was very small, and representing that taking into consideration the cost of the well and the cost of operations they not only were not making any money but were losing money at 55½ per cent royalty, and that they thought it would only be fair and equitable to reduce the royalty; he does not remember that they fixed any [269—191] figure, they just asked for reduction of royalty; the conversation on this subject was participated in by Mr. Staygers, Mr. Cotter and the witness;

(Testimony of E. C. Finney.)

after Cotter and Staygers had made it clear to Mr. Finney what they were seeking he told them he did not think the Department would be able to grant their request, but suggested that it be put in writing, and a few days after that interview these gentlemen filed with him the written applications dated November 22 and November 23, 1921 (Exhibits 31 and 32). As to other talks with Staygers and Cotter subsequent to the filing of these exhibits, Mr. Finney believes they were in the office on two different occasions and the last time there was some discussion about the possibility of extending them relief by indirection; if royalties could not be reduced that it could be obtained by giving an additional lease at a lower royalty which would make a lower average on all the land they would then have under lease; this was discussed the second time that there was a conference between Staygers, Cotter and the witness; it is quite likely that at that time the map of the reserve was looked at, Mr. Finney always had a map of the two reserves in his room and in discussing any particular tract of land would refer thereto, and thinks he probably did on this occasion. Before any action was taken on the Staygers and Cotter applications, the witness talked to Secretary Fall about it before the latter left for the West; the applicants were not notified formally or in writing of the Department's action until December; the leases are dated December 14, 1921, and the first information given the applicants with respect

(Testimony of E. C. Finney.)

to the Department's action was at about that time. After Mr. Finney had talked with Messrs. Cotter and Staygers he talked to Secretary Fall on the subject prior to the time that the latter left for the West on December 1, 1921; the first time he talked with the Secretary he probably just told him of the verbal request, he recalls this because he had stated to Cotter and Staygers that he didn't believe there could be or should be a reduction in royalties as they requested, stating that these royalties had been fixed on competitive bidding and the Department would hardly be justified in reducing royalties so fixed; and he thinks he told the Secretary about the same thing and the Secretary agreed with that view. A few days later the written applications came to the hands of the witness and he then spoke to the Secretary again about the applications for additional lands, [270—192] briefly telling him in substance of the discussion which he, Mr. Finney, had had with Staygers and Cotter with regard to additional leases which would bring the average royalty down, and the Secretary orally agreed to extending that relief or authorized it.

Prior to November, 1921, the persons and companies to whom were addressed the Secretary of the Interior's November 14, 1921, telegram had received leases for producing wells in Naval Reserve No. 2 pursuant to claims which they had filed under the Act of February 25, 1920; those leases had been granted by Secretary of the Interior John Barton

(Testimony of E. C. Finney.)

Payne of the Wilson administration; as regards how they were selected for the additional leases which resulted from the November 14, 1921, telegrams, the statute provides that if additional leases were made the President might have the authority to lease either additional wells or the remainder of the areas of the mining locations upon which the wells were located. So that they had a preferential right in case leasing was to be done. Under Section 18 of the act the President may in his discretion make area leases within limitations prescribed in the act to those persons who have a preferential right, and the persons to whom the aforementioned telegrams were sent had a preferential right. There is no record of any kind showing any action of the President of the United States on those leases and there was no competition for those leases which were granted to those nine concerns. All of these leases, made subsequent to and resulting from the November 14, 1921, telegrams, were in Naval Reserve No. 2, and they were in the naval reserve.

Returning to the subject of the applications of Ramsey, by Staygers, and the Pan American Company, by Cotter, made in November, 1921, for the relief about which the witness has testified, before any action was taken thereon the Navy Department and the Interior Department had concluded to seek leases on three other sections in Naval Reserve No. 1, these sections being described as Section 25, T. 30 S., R. 23 E., Section 6, T. 31 S., R. 24 E., and Section 2, T. 31 S., R. 24 E.

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(Testimony of E. C. Finney.)

Mr. Finney identified, it having been sent out under date of November 30, 1921, by Dr. Bain, letter, together with three pages attached thereto, and the same was offered in evidence as Defendants' Exhibit "Q," and reads as follows: [271—193]

DEFENDANTS' EXHIBIT "Q."

"November 30, 1921.

Pan American Petroleum & Transport Company,
Security Building,
Los Angeles, California.

Gentlemen:

The Department may decide to lease certain tracts in section 25, T. 30 S., R. 23 E., Sec. 6, T. 31 S., R. 24 E. and Sec. 2, T. 31 S., R. 24 E., and you will find enclosed plats of the well locations, together with the terms of the bid required by the Department.

It practically amounts to a flat bid for that portion of the average production per well above 20 barrels in one tract and 50 barrels in the other two tracts. Your attention is called to the fact that the Department will expect an exchange of the royalty oil for fuel oil at tidewater points.

I am inviting you to submit bids on any one or all of these three tracts, the bids to be in Washington by December 31st, 1921, so that they may be considered in connection with the awarding of leases.

Yours very truly,

H. FOSTER BAIN,
Director." [272—194]

(Testimony of E. C. Finney.)

It was agreed by counsel that the three pages attached to the foregoing were headed "Leases to be given in Naval Reserve No. 1," and described the tracts in sections 2, 6 and 25 to be leased, and set forth the royalties, and provided, in substance, that the royalties were as prescribed for the wells of the lower productivity and that bidders shall state what royalty they offer on wells above a certain number of barrels a day production.

Under the above-quoted call for bids dated November 30, 1921, no leases were made to the lands described in said call in Section 6 or in Section 25 for the reason that no satisfactory bids were received for those lands; he has not with him the bids which were received for the lands in those two sections and thereupon counsel for the defendants called upon counsel for the plaintiff to produce the same and counsel for the plaintiff stipulated that the same would be obtained and produced later in the trial.

As regards Section 2, located directly below Section 35 which is owned by the Pacific Oil Company, bids were received by the Department late in December, 1921, one of said bids being dated New York, December 28, 1921, from the Pan American Petroleum Company, which, having been identified by the witness, was received in evidence as Defendants' Exhibit "R," and reads as follows: [273—195]

DEFENDANTS' EXHIBIT "R."

"New York, N. Y., December 28, 1921.

"The Secretary of the Interior,

"Washington, D. C.

"Sir:

"In response to letter of the Director of the Bureau of Mines dated November 30, 1921, the Pan American Petroleum Company herewith proposes to drill eighteen wells on the tract of land in Section 2, Tp. 31 S., R. 24 E., Naval Reserve #1, California, described as follows:

" 'A tract 5280 feet east and west by 1173 feet north and south along the north border of Sec. 2, Tp. 31 S., R. 24 E., bounding Sec. 35, Tp. 30 S., R. 24 E. on the North; Sec. 3, Tp. 31 S., R. 24 E. on the West; and Sec. 1, Tp. 31 S., R. 24 E. on the East,'

and to pay to the United States on all production therefrom not exceeding 50 barrels per well per day as set forth in said letter of November 30, and on the portion of the average production per well per day exceeding 50 barrels, for oil less than 30 degrees Baume thirty-five per cent (35%) and for oil 30 degrees Baume or over forty-five per cent (45%), or as follows:

Oil less than 30 degrees Be.	Oil 30 degrees Be. & Over
---------------------------------	------------------------------

On that portion of the average
production per well not ex-
ceeding 20 barrels per day

for the calendar month....12-1/2%

12-1/2%

On that portion of the average
production per well of more

(Testimony of E. C. Finney.)

Oil less than	Oil 30 degrees
30 degrees Be.	Be. & Over

than 20 barrels and not more		
than 50 barrels per day for		
the calendar month.....	14-2/7%	16-2/3%

On that portion of the average		
production per well over 50		
barrels per day for the calen-		
dar month	3%	45%

On gas and casinghead gaso-
line, as given in the regula-
tions.

"We agree, if required, to exchange fuel oil for
royalty oil on the basis proposed.

"If awarded this lease we will agree to complete
the eighteen wells in nine (9) months instead of
fifteen (15).

"Respectfully,

"PAN AMERICAN PETROLEUM COM-
PANY.

"By JOS. J. COTTER." [274—196]

The witness has not with him the other bids that
were received on Section 2 in response to the No-
vember 30, 1921, call, but counsel for the plaintiff,
having been requested so to do, agreed to produce
them.

When these bids were received, up to December
31, 1921, they were opened by the witness, and then
having looked into the state of the record with re-
gard to Section 2, on which satisfactory bids had
been received, he found that that record showed
a pending and undisposed of claim made by White

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(Testimony of E. C. Finney.)

and Coffin and he advised Mr. Cotter of the Pan American Company, as well as representatives of other bidders, that action of the Department would have to be deferred until that claim could be disposed of; subsequent to his conveying that information he received, under date of January 5, 1922, the following telegram (Defendants' Exhibit "S").

DEFENDANTS' EXHIBIT "S."

"Los Angeles, Cal., Jan. 5, 1922.

Honorable E. C. Finney,

Acting Secretary of the Interior,

Washington, D. C.

We have quitclaim contract from White and others covering Section Two on part of which we submitted bid. Am returning to Washington to take matter up with you. This will eliminate necessity for delay which you expected.

J. J. COTTER."

Thereafter, in the month of January, 1922, Mr. Cotter called at the office of the witness and told him that the Pan American Company had acquired title to the White and Coffin claims to Section 2 and was prepared to turn the title over to the Department for a consideration, which was this: The Pan American Petroleum Company's bid was the highest and best bid on the double line of wells on the north side of Section 2 and Mr. Cotter proposed that if award was made his company under that bid and his company was given a lease for the remainder of Section 2, it would relinquish to the United States the White and Coffin mining titles.

(Testimony of E. C. Finney.)

After discussing the matter with Cotter, Mr. Finney asked him to put the proposition in writing and he received from Mr. Cotter the following communication, which was read in evidence as Defendants' Exhibit "T": [275—197]

DEFENDANTS' EXHIBIT "T."

"February 1st, 1922.

"The Secretary of the Interior,

"Washington, D. C.

"Dear Sir:

"Pursuant to the request of the Department on December 28, 1921, we submitted bid for lease on a strip of land 1173 ft. wide across the north side of Section 2, Tp. 31 S., R. 24 E., M. D. M., California.

"On February 23, 1911, R. J. White filed mineral application No. 03022 for the Red Top Nos. 1, 2, 3 and 4 Placer claims, which claims were located January 1, 1907, based upon discovery of large and valuable deposits of Fuller's earth upon each of said claims at and prior to the date of location, which date was prior to any withdrawal of the lands. This claim embraced the whole of Sec. 2.

"This application is still of record, no hearing has ever been had respecting claimants right to title to this land, and he is presumably entitled to a patent under the placer mining laws.

"Therefore it appears that it will not be possible for the Department to lease the strip of land above mentioned until and unless some disposition is made of said mining claim. In order to avoid the delay incident to trying out this matter in the Department

(Testimony of E. C. Finney.)

and possibly in the courts the undersigned company which is in position to have filed with the Department quit claim deed to said mining claim covering all of said Section 2 hereby makes the following proposition:

"If the Department will accept our above mentioned bid for lease on said 1173 ft. strip across the North side of the Section we will deliver to the Department in connection therewith quit claim deed to said mining claim covering all of said Section, provided that the Department will issue to us lease for the remainder of said Section at the Department's regulation royalty rates, 12-1/2 to 20%.

"Respectfully,

"PAN AMERICAN PETROLEUM COMPANY.

"By JOS. J. COTTER." [276—198]

The witness then identified the following intra-departmental correspondence on the subject of Section 2, the claims thereon, and a compromise thereof, which correspondence, consisting of letters and memoranda, was read in evidence as Defendants' Exhibit "U" and in substance is as follows:

Exhibit "U-1," letter dated January 3, 1922, addressed to the Secretary of the Interior and signed William Spry, Commissioner of the General Land Office, setting forth facts relating to the White and Coffin claim, their offer made to the Secretary of the Navy to compromise the same, and the Secretary of the Navy's letter to the Secretary of the

(Testimony of E. C. Finney.)

Interior of June 28, 1921, forwarding same; Commissioner Spry concluded his letter by stating that in the event a compromise by granting a lease is made the same might be made under the provisions of the act of June 4, 1920.

Exhibit "U-2" is dated Bureau of Mines, February 4, 1922, headed "Memorandum to Secretary Fall," signed H. Foster Bain, Director, who stated that there had recently been submitted to several California oil companies invitations for bids for leases in Sections 2, 6 and 25; satisfactory bids had been received on Section 2 and it is probable that the Department will grant a lease to that area in the near future; half of the lease proposed for Section 6 lies within a temporary reserve to be arranged with the Pacific Oil Company and in view of this and of additional information gathered while in California, it is recommended no lease be granted to the 18 wells in that section. Bids received for the south line of Section 25 were hardly satisfactory and it is recommended that this area be not leased. This memorandum is endorsed: "Recommended, Feb. 8, 1922, E. C. Finney, Acting Secretary." Mr. Finney testifies that that indicates his approval of the recommendation made by Director Bain in his memorandum, Exhibit "U-2." As part of the same exhibit there was read the next paper on the subject, dated Bureau of Mines, February 6, 1922, and signed E. A. Holbrook, Acting Director, the witness Finney testifying that Mr. Holbrook was the Assistant Director of the Bureau

(Testimony of E. C. Finney.)

of Mines and was Acting Director in the absence from the city of Director Bain. Mr. Holbrook's memorandum was addressed "to Secretary Finney" and reported that bids were received for lease on 18 wells located along the north line of Section 2, T. 31 S., R. 24 E., Naval Reserve No. 1, from General Petroleum Corporation, R. D. Clarke, Pan American Petroleum Company, Standard Oil Company, White and Coffin, Associated [277—199] Oil Company, Pacific Oil Company and W. R. Ramsey; the bids were analyzed and it is stated that the four highest bids are those of the Pan American Petroleum Company; it is further stated that in view of the Fuller's earth claim on this section "it is very evident that a lease cannot be awarded to this company within two or three months of the date which they have specified. The Pacific Oil Company, while bidding as high as the Pan American Petroleum Company, has a slower drilling campaign and has no equity in the Fuller's earth claim. The Pan American Petroleum Company agrees to complete the 18 wells in the 9 months. Inasmuch as the Pacific Oil Company has three offsetting wells located along the south line of Section 35, the rapid drilling campaign proposed by the Pan American Petroleum Company is very attractive to this Department in order to avoid additional loss by drainage from the offset wells. The Department therefore must consider the comparative value of the bids of the Pan American Petroleum Company and W. R. Ramsey, Mr. J. W. Staygers, represent-

(Testimony of E. C. Finney.)

ing W. R. Ramsey, has today withdrawn his bid by wire, so obviously the Pan American Petroleum Company has the best bid, providing a compromise can be effected for the mining claim this company now holds on Section 2. In view of the above facts, it is recommended that the Department grant the lease for 18 wells along the north line of Section 2 to the Pan American, based upon the offer made in their bid. Mr. Bain has been advised by a representative of" that company that they will be willing to turn over to the Government a quitclaim deed to Section 2 provided they would get in exchange a lease to these 18 wells at a royalty as bid and a lease on the remaining portion of the north half of the section at Government's sliding scale royalty. The Holbrook memorandum concluded: "I think the Department should attempt to make such a compromise with the Pan American Petroleum Company."

The next paper, part of Defendants' Exhibit "U," and relating to the same subject as those last introduced, was identified by the witness as a memorandum from him to the Secretary of the Interior dated February 6, 1922, and reading: [278—200]

DEFENDANTS' EXHIBIT "U."

"Dear Mr. Secretary:

Referring to attached memorandum from the Director of the Bureau of Mines, which finds the bid of the Pan American Petroleum Company to be the best bid submitted for the drilling of 18 wells on

the north line of Sec. 2, T. 31 S., R. 24 E., I have to advise you that after bids had been called for it was discovered that the entire Sec. 2 was covered by a mining claim located in 1907, long prior to any withdrawal, as a fuller's earth placer mining claim; that the title of the locators was acquired by R. J. White, who filed application for mining patent therefor, and this said application is still pending and uncanceled, and that so long as this mining application is of record and undisposed of this Department would be without authority to lease or dispose of the lands to anyone else. The record was in California in the hands of the Field Division of the Department of the Interior and the Department of Justice, and no action thereagainst had been taken. As you know, to clear the record it would be necessary to prefer charges against the application, to prove that the location was invalid or that the law had not been complied with. Under our practice, this would involve the ordering of a hearing and taking of testimony, the right of appeal from the local office to the General Land Office, and to Secretary of the Interior; also if decision were adverse, the mineral applicants might carry the matter into the courts, and tie the land up for months or years. If they were successful, they would obtain a patent for the entire section, which patent, in my judgment, would carry with it the right not only to fuller's earth but to all other minerals in the land, including oil and gas. Meanwhile, during any proceedings which might be had in this Department or the court, the land would be drained of its oil by the wells on adjoining patented land. The Pan

(Testimony of E. C. Finney.)

American Petroleum Company, learning of this situation, has secured from the mineral applicant a quitclaim deed to the United States to all of Sec. 2, which they agreed to surrender and turn over to the United States, compensating the mineral applicants, upon condition that the bid of the Pan American Petroleum Company, which, as stated is the best bid received, in any event be accepted and an additional area in the north part of Sec. 2 be leased to them at regulation royalties. This seems to be the only practicable solution of the difficult situation in which this Department finds itself with respect to said Sec. 2. If not accepted, protracted litigation in the Department and the courts will ensue and the Government meanwhile suffer the loss of the oil and gas beneath the land by drainage.

Respectfully,

FINNEY." [279—201]

The witness testified that the name "Finney" to the above is in his handwriting and he identifies on that paper just to the left of his name a notation reading: "Approved, Fall," as in the handwriting of Secretary of the Interior Albert B. Fall.

The final paper constituting part of Defendants' Exhibit "U" is a letter dated February 7, 1922, from the witness, signed E. C. Finney, First Assistant Secretary, to the Commissioner of the General Land Office, in which it is stated that on the recommendation of the Bureau of Mines and the law officers of the Department the Secretary found the bid

(Testimony of E. C. Finney.)

of the Pan American Company to be the best submitted for the drilling of 18 wells on the north line of Section 2; he also in consideration of the surrender to the United States of all claims to that section under mineral application filed by R. J. White, by the Pan American Company, which had purchased that claim, and which offered to surrender it to the United States in consideration of a lease for all of Section 2, had decided (1) to award to the Pan American Company a lease for the 18 offset wells at the royalty and under the conditions specified in its bid; (2) to award to said company a lease to the remainder of the north half of Section 2 at the regulation royalty for oil and gas produced therefrom. All papers, including the quitclaim referred to, are transmitted to the General Land Office and the Commissioner is directed, in cooperation with the Bureau of Mines, to prepare the necessary lease or leases in accordance with the award.

The witness was then interrogated about the fact that from the above papers regarding Section 2 it appeared that under date of February 1, 1922, the Pan American Company, by Cotter, proposed to surrender the White and Coffin claims in consideration of, first, the award to it under its bid of December 28, 1921, of a lease to that strip along the north half; and, second, a lease on the basis of the regulation royalties of all the remainder of Section 2; whereas it appears that the action taken was to lease to that company in consideration of the quitclaim not all the remainder of Section 2 but only the rest of the north half, and being asked how that

(Testimony of E. C. Finney.)

was reached he answered that "it was regarded as a compromise or settlement. We tried to drive as hard a bargain with them as we could." Asked who tried to drive as hard a bargain as [280—202] could be driven, he answered: "I did for one, and the Bureau of Mines"; that he and representatives of the Bureau of Mines talked with Cotter once or twice about the matter; that Cotter was endeavoring to get a lease to all of the remainder of Section 2 for his quitclaim deed and witness and the Bureau of Mines were endeavoring to give him a lease for as small a portion as they could; the result was that the bargain driven is the one represented by the lease under which the company got only the strip that the witness offered to give it.

Going back in the testimony in point of time to November and December, 1921, the witness repeats that when Mr. Doheny's letter to Mr Fall dated November 28, 1921, was received in the office of the Secretary the notation at the top thereof in Mr. Safford's writing, consisting of the name "Finney," indicates that that letter was routed to the witness; Secretary Fall's office was on the sixth floor of the Interior Department Building and Mr. Finney's on the fifth floor; the routing he speaks of means that Safford, knowing Mr. Finney's connection with these matters, had sent that letter down to his office where, according to his recollection, he read the letter and saw that it was nothing with which he had to deal and he returned it either to Safford or to the Secretary, probably to Safford; the next time that he saw Mr. Doheny's letter of

(Testimony of E. C. Finney.)

November 28th it was brought to his office by Dr. Bain personally some time in November and Bain asked him to write Cotter, which he did as shown by his letter to Cotter dated December 16th (Exhibit No. 67); when the November 28th letter first came to him it was unaccompanied by any note or message save the word "Finney" written at the top; he does not recall seeing any other note or paper attached to the letter and Dr. Bain came to him with it about December 16th; nothing was said to the witness by Dr. Bain or Mr. Safford or Mr. Fall at any time about keeping that letter or its contents secret; when it last left Mr. Finney's desk on or about December 16th it was still in the hands of Dr. Bain and he did not hear of that letter again until the Senate Committee hearings early in 1924 when he read it in the report of those hearings. There is no record known to him in the Department of any action having been taken on Mr. Doheny's letter of November 28, 1921, except this, first, a letter from Secretary Fall to Admiral Robison dated November 29, 1921; and, second, Mr. Finney's letter to Mr. Cotter asking him when next in Washington [281—203] to see Dr. Bain about the subject matter of the Doheny letter.

The Secretary of the Navy's letter dated October 25, 1921, Exhibit 24, was brought to Mr. Finney's attention some time in November, 1921. At the same time there was called to his attention Secretary Fall's letter of October 30, 1921, bearing the same exhibit number. These were probably called to the attention of the witness just before Secretary

(Testimony of E. C. Finney.)

Fall left for the west on December 1st so that he would be informed as to the situation. The witness knew of the letter of November 8, 1921, from Secretary Fall to the Secretary of the Navy (Exhibit No. 25) some time before the first of December. As to the letter from Secretary Denby to the Secretary of the Interior dated November 10, 1921 (Exhibit No. 26), in which the specifications requested by Exhibit 25 were given, and the letter of November 15, 1921 (Exhibit No. 28), from Secretary Denby to Secretary of the Interior, specifying points at which the Navy wanted fuel oil delivered, these letters were all routed to the Bureau of Mines which Bureau was dealing directly with the subject matter and with the Navy's representatives and they were probably called to his attention by that Bureau. There was received at the Interior Department while Mr. Fall was away from Washington letter signed by Assistant Secretary of the Navy Roosevelt, addressed to the Secretary of the Interior, dated December 9, 1921, relating to the plans for the first Pearl Harbor project, and witness immediately, under date of December 10, 1921, Exhibit 63, replied to it, and in his letter called attention to the existing uncertainty as to the desires of the Navy in connection with royalties from the naval reserves, and this was followed by a letter to the Secretary of the Navy signed by the witness, Exhibit 65, as regards which he cannot tell the details of the arrangements which had been made, spoken of in his said letters of December 10 and 14, under which crude oil was to be exchanged with

(Testimony of E. C. Finney.)

four pipe-line companies, described as contractors in his letter of December 10th, for fuel oil delivered by them at tidewater; that letter was prepared for him by the Bureau of Mines which looked after those details; the witness knows that there had been an arrangement with some of the said companies because later on he notified the Standard and the different oil companies out here in California of the change; in other words, of the change from taking royalty oil for fuel oil for current use to the plan [282—204] to exchange royalty oil for storage oil in tanks, and he signed or wrote letters and telegrams to those various companies advising them of the change in the arrangements, and those are the parties referred to as contractors and as four pipe-line companies; the witness thinks he knew that these companies thus referred to were the Standard, the Union, the Associated and General Petroleum Companies, though he cannot recall definitely all of the names, but knows the Standard was one and the Associated was one. Judge Finney does not know of any advertisement, either by newspaper or letters, upon which that arrangement was or those contracts were made with those four pipe-line companies prior to November or December, 1921; as to whether he knows as a matter of fact that this exchange arrangement, provided for delivery by the Government to these four pipe-line companies in the field of crude oil and their delivery from time to time and from place to place at tidewater of fuel oil, was entered into without competition, the witness can only say that he does not know

(Testimony of E. C. Finney.)

of any advertisement or any call for bids in connection therewith and found no such evidence in the records.

Referring to memorandum dated November 30, 1921, Exhibit 60, signed by the witness, in which occur the words "By direction of the Secretary," as stated in his direct examination the presence in the memorandum of the words quoted indicates to Mr. Finney that that memorandum was sent by him to the Bureau of Mines by direction of Mr. Fall. The witness testified again, as he has already done, that Secretary Fall left Washington December 1, 1921, and remained away until late in January, 1922; during that time the witness saw Admiral Robison on several occasions and recalls at least one conversation with the Admiral over the telephone some time between the 5th and 10th of December which conversation he refers to in his letter of December 6, 1921, to the Director of the Bureau of Mines, Exhibit 61; his recollection is that the first information he had of the opinion of the Solicitor for the Navy Department referred to in Exhibit 61 was in a telephone message from Admiral Robison and he probably wrote his letter of December 6th (Exhibit 61) to the Bureau of Mines the same day or the following day; that letter specifically recalls the directions given the Bureau of Mines in Judge Finney's previous memorandum of November 30th (Exhibit 60), and the procedure outlined in that November 30th memorandum [283 — 205] had been communicated to the Bureau of Mines by di-

(Testimony of E. C. Finney.)

rection of Mr. Fall, which fact the witness fixes by the use therein of the words "By direction of the Secretary"; when Admiral Robison telephoned the witness on December 5 and 6, 1921, advising him, first, what the legal department of the Navy had decided, and, second, what the Secretary of the Navy now desired, Mr. Finney wrote his letter of December 6th (Exhibit 61); before he sent that letter of December 6th, recalling the November 30th instructions, he did not in any way communicate with Secretary Fall; the basic reason for his letter of December 6th (Exhibit 61) was the request or direction of Admiral Robison who told him that the Secretary of the Navy had approved that procedure.

There next crossed in the mail between the Navy and Interior Departments Acting Secretary Finney's letter of December 14, 1921 (Exhibit 65), and Secretary Denby's letter of the same date (Exhibit 66), and then between that time and the end of December, 1921, "We asked the Navy—or specifically Admiral Robison—to furnish us additional copies of blue-prints concerning the Pearl Harbor project," and also specifications; this was preparatory to Director Bain's trip to the west and the blue-prints and specifications requested were taken by Mr. Bain when he went west.

Thereupon there was received in evidence Defendants' Exhibit "V," being a letter dated December 15, 1921, from Admiral Robison to Mr. Finney; Defendants' Exhibit "W," letter dated December 17, 1921, from Mr. Finney to Admiral Robison;

(Testimony of E. C. Finney.)

Defendants' Exhibit "X," letter from Commander Hepbourn, Acting Chief of the Bureau of Engineering, Navy Department, to Mr. Finney, dated December 24, 1921; Defendants' Exhibit "Y," letter dated December 29, 1921, from Mr. Finney to Commander Hepbourn; Exhibit "Z," letter dated December 29, 1921, from Mr. Finney to Admiral Robison; Defendants' Exhibit "AA," letter dated December 28, 1921, from Admiral Robison to the Secretary of the Interior; Defendants' Exhibit "BB," a letter dated December 30, 1921, from Mr. Finney to Admiral Robison; consisting of correspondence by which, in substance, the Interior Department requested the Navy Department for blue-prints and specifications for the Pearl Harbor storage project, and the Navy Department transmitted to the Interior Department a stated number of copies of blue-prints, specifications, and of a drawing which "will be useful to prospective bidders as it gives further [284—206] information"; during this period Admiral Robison informed the witness that the Navy Department was about to detail an engineering officer from its Bureau of Yards and Docks to act with the Interior Department in connection with the Pearl Harbor project, but as the services of this officer could not be used until Dr. Bain returned from the west, the witness so informed the Navy.

In January or early in February, 1922, Director Bain and Secretary Fall having both returned to Washington, there was a conversation in the Secretary's office participated in by the Secretary, Dr.

(Testimony of E. C. Finney.)

Bain and the witness regarding the further steps to be taken in the Pearl Harbor project matter; at the time of this conversation the invitations for bids had not yet been sent out but Director Bain for his bureau was working on the matter and Secretary Fall said to Mr. Finney and to Director Bain, in substance, that he was going to be engaged in other business or affairs and that he wanted the witness and Bain to handle this Pearl Harbor project matter. Thereafter it came to the knowledge of the witness that on February 15th Director Bain sent out the first draft of the proposals for bids; Mr. Finney has a faint recollection that before that letter went out Bain talked with him about the specifications, at any rate they went out accompanied by the letter under Bain's signature (Exhibit 73). By the term "specifications" as here used the witness means the terms and conditions of the invitation for bids as distinguished from the Navy Department's specifications for construction. Before this letter of February 15th was sent out the witness thinks Director Bain informed him in a general way that while on the Pacific Coast he had conferred with Storey and McLaughlin and witness thinks Bain mentioned Shoup; some of the executives of the large oil companies out here; he does not remember all of their names, it was just a general conversation in which Bain did not go into details; he understood that Dr. Bain had discussed the matter in a general way with representatives of several oil companies on the Pacific; he did not understand that Bain had

(Testimony of E. C. Finney.)

stated anything specific to them in the form of worked out plans; before Bain left Washington the witness knew that Bain was taking with him the Navy specifications, but what he is referring to in saying that he does not understand that Dr. Bain stated anything specific to the representatives of the oil companies while he was on the Pacific Coast in the form of [285—207] worked out plans is the later invitations which were sent out by the Department of the Interior containing the details and conditions of the bidding. The talk between Director Bain and the witness about the general result of the former's trip to the Pacific Coast was all prior to the time when Mr. Storey and Mr. Sutro called on the witness; they did not come in until March. After Director Bain's letter of February 15th, the first request for bids, had left the Department, and in Dr. Bain's temporary absence from the city, there came to Mr. Finney's attention Admiral Gregory's objection to a cost-plus form of contract and immediately it was brought to his attention Mr. Finney spoke to Secretary Fall, and then with Ambrose's help prepared and sent out the telegrams of February 17, 1922 (Exhibit 80). When he spoke to Secretary Fall at this time he mentioned to the Secretary the objection made to the cost-plus plan and Secretary Fall said, in substance, that he agreed with Admiral Gregory. During the period intervening between the sending out of the invitations for bids in their first form on February 15th and in their final form under date of March 7th, the

(Testimony of E. C. Finney.)

witness was under the impression that Director Bain was co-operating and conferring with the officers of the Navy Department, Admiral Robison, Admiral Gregory, and Lieutenant Keating, though he cannot give any specific instances; the fact, stated in substance, is that as regards the form of the conditions for bids that was largely left with Director Bain and his assistants; as regards the engineering or construction details, his understanding was that the Navy was looking after that, and as regards the legal form of what went out Mr. Finney gave his particular attention to that as he thought he was a little better qualified along that line than in engineering. During the interval between February 15th and March 7th, 1922, Mr. Dunn and Mr. Cotter came in on one occasion and spoke to the witness with regard to cost-plus plan, Dunn said he favored that plan, or, rather, he said they did not have definite information sufficient to act on under the other plan. Mr. Dunn was introduced to the witness as the head of the J. G. White Company by Dr. Bain; Mr. Finney had known of the White Company for years; during the conversation to which he refers Mr. Dunn was urging the Government to accept bids on the cost-plus-a-fixed-fee plan, and Mr. Finney informed him that the Government's position as advocated by Admiral Gregory, concurred in by the Interior Department, [286—208] was a lump sum plan; in respect to that aspect of the matter the Interior Department were acting and doing just what the Navy Department had asked them to do.

(Testimony of E. C. Finney.)

When on April 15, 1922, bids were opened in the circumstances stated by the witness on his direct examination, the minutes read in evidence by counsel for the plaintiff were made by a stenographer designated by the witness for that purpose; there were several representatives of bidders present; there was no objection or protest made at that time by any representative of any bidder against the consideration of Proposal B of the Pan American Company and he does not recall that they received at any time in the Department any protest to consideration of Proposal B; there were only the telegrams, already read in evidence, in respect to the whole matter, from persons who wanted to get in on the competition; after the bids were opened and the witness had read to those present the substance of all proposals received, the Standard Oil proposal, the Associated Oil proposal, the Pan American A and B Proposals, no person, interested or otherwise, protested against the Government's consideration of Proposal B. When the representatives of the bidders who were present retired from the room the witness turned over all the proposals to Dr. Bain and Mr. Ambrose, with instructions, in substance, to examine them carefully, make an abstract of them, and return them to the witness with a report and recommendation; he did not tell Dr. Bain or Mr. Ambrose, or give them any instructions, about what their recommendation should be; he had at that time no instructions whatever from Secretary Fall as regards what their recommendation

(Testimony of E. C. Finney.)

should be; he had not prior to the time Secretary Fall left Washington on April 13, 1922, received any instructions from him as to what consideration any of these bids should receive; it is a fact that when Secretary Fall left Washington he left in the hands of the witness and Dr. Bain the matter of opening these bids and giving them consideration without any restrictions being placed on the witness and Bain at all.

On Monday, April 17, 1922, Mr. Ambrose brought to the witness his "Memorandum to Secretary Finney" containing abstract, report, and recommendation (Exhibit 119), and the witness called Admiral Robison over to his office and the three of them, Ambrose, Admiral Robison, and the witness, went [287—209] over the matter and the Ambrose report and recommendation and the witness recollects sending to Mr. Fall, that afternoon, after the conference, a telegram, copy of which has been read in evidence as Plaintiff's Exhibit No. 120, but he has been unable to find a copy of that telegram in the Department's files; in the year 1924 the files of the office of the Secretary of the Interior and the Bureau of Mines were placed at the disposal of representatives of the Senate Committee and those representatives were engaged in going through the files for many weeks and they took many of the files up to the Senate Committee.

Subsequent to the time that bids were opened on April 15th and up to the time of the sending by the witness of telegram to Secretary Fall on April 17th,

(Testimony of E. C. Finney.)

Exhibit 120, he had not sent anything to Mr. Fall regarding these bids and their relative merits; according to his best recollection that telegram was dictated by him in the presence of Ambrose and Robison; in it he states that "In opinion Ambrose, Robison and myself Pan American alternative bid best offered and should be accepted," and he said nothing about Bain's opinion because Bain was away at the time; before any word was sent to Secretary Fall a concurrence of opinion was expressed in that conference by Admiral Robison, Mr. Ambrose and the witness.

He has not been able to find in the Department's files copy of the telegram of April 18, 1922, from Secretary Fall, addressed to "Finney-Safford, Interior Department, Washington, D. C.," Plaintiff's Exhibit 121, but if he received that telegram from Secretary Fall he naturally would call it to Admiral Robison's attention, but his memory is not very clear as to whether he did so before he signed the letter of April 18, 1922, to the Pan American Company (Exhibit 122). He handled hundreds of matters during that year relating to lands and leases and contracts and does not recall all of those details. It is highly probable, if he received that telegram, that he would have advised Robison of its contents, but he cannot say positively that he did; he did confer with Robison and Ambrose on the 17th and had Robison's opinion then; it is extremely likely, highly probable, that he did consult Secretary Fall by wire and got an answer from him on the

(Testimony of E. C. Finney.)

18th, but he has not been able to find any copy of those telegrams in the files lately; he heard them read, however, as part [288—210] of the plaintiff's direct examination of him, and he has no question but that that telegraphic correspondence did take place, he really believes it did take place, because it is in accordance with what he did in other things; he hasn't a doubt in the world that if he received the telegram from Mr. Fall dated April 18th (Exhibit 121) he followed the suggestion contained therein and did consult Robison and Denby before writing his letter of award of April 18, 1922, to the Pan American Company, because he always carries out the orders of his superior. Mr. Finney recalls a statement given out to the press on April 18, 1922, headed "Memorandum for the Press. Immediate release. April 18, 1922," the last page of which relates to naval reserves in California, and he thinks that was written by himself in conjunction with Admiral Robison of the Navy and Director Bain of the Bureau of Mines; the words "Immediate release" which appear at the head of that memorandum meant that the newspapers were privileged to publish the information therein contained right away. Thereupon the said memorandum was received in evidence as Defendants' Exhibit "CC" and the same reads as follows: [289—211]

DEFENDANTS' EXHIBIT "CC."

"MEMO FOR THE PRESS.

April 18, 1922.

IMMEDIATE RELEASE.

The Secretary of the Navy authorizes the following:

For more than a year the Secretary of the Interior and the Secretary of the Navy have had under consideration the handling of the two Naval Reserves in California, and the Naval Reserve in Wyoming, the latter known as the Teapot Dome, with the idea of working out a policy which would secure the greatest conservation and use for the Navy of the oils in such reserves, prevent drainage by wells of private owners on adjoining lands, and secure to the Navy an available storage of fuel oil at convenient points readily accessible wherever and whenever needed. It was found that oil was being drained from all of these reserves in very large quantities, amounting to millions of dollars of loss up to the present time, by wells on adjoining lands, and that in all probability within a few years the Government reserves would be depleted. It was also ascertained that the storage of fuel oil in suitable tanks resulted in practically no loss—certainly not exceeding one-tenth of one per cent per annum. The Naval Reserves in California can be reached through existing pipe lines, and a large portion of the lands have been leased under preference rights granted by the general oil leasing act. The principal problem there was the exchange of the crude oil, which in its natural state is unfit for use by the

Navy for fuel oil, in proper and available storage. With respect to the Naval Reserve in Wyoming, known as the Teapot Dome, same was not available for Naval use or for exchange for fuel oil, for the reason that the field lies in the interior and is not connected by pipe line with any point on the sea coast or with the existing pipe line systems of the country. While there are no wells within the limits of the reserve, it was found, after a careful recent geologic study that the reserve was being drained from wells on nearby lands, and in addition the Government was faced with a number of asserted claims within the reserve under the mining law. Moreover, the famous Salt Creek oil field, lying immediately contiguous to the Teapot Dome, and which has been leased under the general leasing act, was without adequate pipe line and refinery facilities, and independent producers have been unable to dispose of more than forty per cent of the possible production of existing wells. Furthermore, competition was absent from the field through lack not only of pipe line and refining facilities, but of companies. Therefore after careful consideration, the Secretary of the Interior, with the complete concurrence of the Secretary of the Navy, invited and considered proposals from a number of prominent oil companies and individuals for the development of the Wyoming Naval Reserve, with the accompanying guarantee of the construction of adequate pipe line facilities from the field to Atlantic and Gulf of Mexico points through connection with existing pipe lines. It was also desired that pro-

vision be made for the exchange of the crude oil produced for fuel oil for naval purposes, in such manner and at such points as might be designated by the Navy. After full consideration of all the offers submitted, a contract was approved by the Secretary of the Interior and the Secretary of the Navy with the Mammoth Oil Company a Delaware corporation, H. F. Sinclair, President. The contract is in the form of a lease, with graduated royalties up to 50% for the entire area of Naval Reserve No. 3 in Wyoming.

The contract provides for the drilling of at least twenty wells within a limited time, for the construction of a pipe line from the field to existing pipe lines in Missouri, for the exchange of crude for fuel oils, the latter for Naval purposes, for the delivery of Navy specified bunker A oil at any point named in the contract from Guantanamo, Cuba, to the northeast corner of the United States. It provides for a [290—212] line of credit under which exchange for the crude oil ample storage for all the produce is to be provided without cash outlay by the Government at any point fixed by the Navy Department along the Coast described. It provides that the lessee shall at such or any other points, at his own expense, and without obligation on the part of the Navy, provide gasoline, kerosene, lubricating and cylinder oil at market prices.

It provides prior right of transportation for all Governmental oils from not only the Teapot Dome but from the Salt Creek field, even prior to the uses of the pipe line by the lessee. It makes the pipe

line when built a common carrier for all Governmental oils. The pipe lines already constructed, with which the new pipe line will connect, involve a present investment of \$115,000,000, and the present contract calls for an investment on the part of the lessee of not less than \$26,000,000 in addition. Furthermore, the contract will bring about immediate competition in the Salt Creek field, and will add from 40 to 60 cents per barrel to the present prices of Governmental royalty oils, now amounting to more than 5,000 barrels per day. This is secured by an option given the Government to sell royalty oil on basis of mid-continent prices if and when desired. This production at present is but 40% of the capacity of existing wells which will immediately be raised to 100%, yielding to the Government for Reclamation, State and Treasury purposes, approximately 12,000 barrels of oil per day, with an added price over and above that which the Government and the independent producers are not receiving of more than \$6,000 per day. Before the contract was approved the Mammoth Oil Company presented to the Secretary of the Interior deeds to the United States for all outstanding claims of title of every character in Wyoming Naval Reserve.

NAVAL RESERVES IN CALIFORNIA.

Proposals from a number of oil companies for the handling and exchange of crude oils in the Naval Reserves in California for fuel oil in storage at Pacific Coast points designated by the Navy, were received by the Department of the Interior Saturday, and an award of contract was today authorized

to the Pan American Petroleum Company, the best and lowest bidder. This involves the exchange of the Navy's royalty oil from the reserves for fuel oil in storage at points designated by the Navy on the Pacific Coast, in storage, of the type selected by and approved by the Navy Department.

As stated above, the losses from drainage in these reserves have been enormous, running into many millions of dollars. The approval of this contract will enable the Government to save the remaining oil in these reserves and exchange it for fuel oil in storage for the benefit of the Navy. It was further stated to be the policy of Secretary Fall upon expiration of existing contracts with the Shipping Board to offer the Government royalty oils in Wyoming and Montana outside Naval reserves for sale with the principal object of bringing a third competitor into the field with refineries and pipe lines, thus insuring competition and the highest securable prices for Government oils."

Thereupon there was offered and received in evidence as Defendants' Exhibit "DD" telegram dated Washington, April 18, 1922, 5:21 P. M., reading as follows: [291-213]

DEFENDANTS' EXHIBIT "DD."

"Albert B. Fall,

Secy. of Interior,

Three Rivers, N. M.

Press statement prepared along lines suggested in your three telegrams, and with concurrence Admiral Robison Bain and ourselves have awarded

California Reserve contract to Pan American Company and included notice thereof in press statement; also your policy with respect to disposition royalty oils after expiration Shipping Board contract included in announcement. Kendrick resolution received but no answer yet *made but will prepare* answer along lines indicated in your telegrams and in statement.

FINNEY SAFFORD."

There was next received in evidence as Defendants' Exhibit "EE" telegram dated Washington, 4:23 P. M., April 19, 1922, reading as follows:

DEFENDANTS' EXHIBIT "EE."

"Hon. Albert B. Fall,
Three Rivers, N. M.

So far as we have been able to learn reaction to making public contract has been favorable. Kendrick has introduced and Senate Lands Committee referred here for report bill proposing to grant to State of Wyoming five per cent or royalties on oil and gas in Wyoming naval reserve. Mondel stated verbally that he intends to introduce bill granting state same percentage of royalties in naval reserves as are granted to state on lands outside reserve. We will not report on any such bill until advised as to your wishes; have not consulted Secy. Navy but anticipate he will object. Awarded Calif. oil exchange contract to Pan American Oil Company, lowest and best bidder; contract will be ready for execution tomorrow. President has written you personal letter stating he is immensely pleased that

(Testimony of E. C. Finney.)

you have been able to accomplish such gratifying results, referring to your letter of April eight in which you detail savings in administration affairs of the Interior Department through economies and increased efficiency.

FINNEY SAFFORD."

Mr. Finney testifies that the reference to the President's personal letter made in the above telegram had no relation whatever to the oil reserves.

Thereupon there was received in evidence as Defendants' Exhibit "FF" telegram dated at Washington, 11:30 A. M., April 20, 1922, reading as follows:

DEFENDANTS' EXHIBIT "FF."

"Hon. Albert B. Fall,

Three Rivers, N. M.

Pan American Oil Company of opinion that Secy. Navy should be made specifically and directly party in and to contract otherwise feel that question of right of delegation must be submitted to their attorneys for opinion involving delay. Shall we comply with their wish or shall we follow exact wording in that respect of Wyoming contract by you.

FINNEY SAFFORD." [292—214]

There was then received in evidence telegram dated Three Rivers, N. M., April 22, 1922, which was marked Defendants' Exhibit "GG" and reads as follows:

DEFENDANTS' EXHIBIT "GG."

"Finney, Safford,
Interior Department,
Washington, D. C.

Think it very well make Secretary Navy and Secretary Interior both directly parties to contract with Pan American; this on entirely different basis Teapot contract to purely exchange oil for construction involving large amounts; the other handling of the entire Teapot field.

FALL, Secretary."

Thereupon there was offered and received in evidence as Defendants' Exhibit "HH" telegram dated Washington, D. C., 4:08 P. M., April 20, 1922, reading:

DEFENDANTS' EXHIBIT "HH."

"Hon. Albert B. Fall,
Three Rivers, N. M.

Ambrose will reach Three Rivers Sunday Monday for conference with you.

FINNEY,
SAFFORD."

There was next received in evidence telegram dated Three Rivers, New Mexico, April 23, 1922, Defendants' Exhibit "II," which is as follows:

DEFENDANTS' EXHIBIT "II."

"Finney, Acting Secretary,
Washington, D. C.

Ambrose arrived. Have consulted reference all

(Testimony of E. C. Finney.)

contracts. As to both contracts go ahead. New appointment to be made by you.

FALL, Secretary."

The witness testifies that the reference to "New appointment to be made by you" has no relation to the matters involved in this case.

(It was stipulated by counsel for plaintiff and defendants that the telegraphic correspondence represented by Plaintiff's Exhibits 120, 121 and 123 and Defendants' Exhibits "DD," "EE," "FF," "GG," "HH" and "II," actually took place between the parties and that the times indicated in said exhibits are correct.)

Mr. Finney, continuing, testified that prior to the time of the arrival of Mr. Ambrose at Three Rivers, New Mexico, which, as indicated by the telegram last above quoted, Exhibit "II," was on April 23, 1922, Mr. Cotter of the Pan American Company had had a conference with the witness on the subject of making the Secretary of the Navy directly a party "in and to" the contract, [293—215] which was to be made with that company; at that time the contract was in process of being drafted; there was at that time in the employ of the office of the solicitor of the Department of the Interior an attorney by the name of J. McG. Williamson, who it is possible may have been consulted in reference to the drafting of this contract by the Bureau of Mines, but Mr. Finney does not recall having a talk with Mr. Williamson regarding the language of the contract; he does not deny having discussed the

(Testimony of E. C. Finney.)

language to be used in the contract with Mr. Williamson, he simply does not remember it. As to the talk with Mr. Cotter, the latter expressed to Mr. Finney the doubt he had with regard to the delegation, if there was a delegation, by the Executive Order of May 31, 1921, of functions from the Navy Department to the Interior Department; they discussed it back and forth and there passed between the witness and Secretary Fall the telegrams of April 20th and 22d (Exhibits "FF" and "GG") so that before Ambrose ever arrived at Three Rivers on April 23d every question with respect to who should be a party to that contract and with respect to the awarding of the contract had been settled in this telegraphic correspondence, "but it could have been unsettled by the Secretary"; Mr. Ambrose carried with him the memorandum which he had prepared respecting these bids, and carried with him various other papers relating to this transaction, among which, witness thinks, was a copy of the letter of April 25th, but of that he is not certain; he was to show these papers to Secretary Fall and discuss the whole situation with him, as well as to discuss the question that Mr. Cotter raised; that question was the direct thing to be discussed with the Secretary, but all these other things were also to be discussed, since if the Secretary had, after considering them, reversed his opinion or changed it his wishes would have been followed; in other words, it was not settled until the witness received the "Go ahead" telegram of April 23d; but that changed

(Testimony of E. C. Finney.)

nothing that the witness had been told to do before.

As regards the letter of the witness to the Pan American Company dated April 18, 1922, notifying the company of the award to it of the contract, it was Mr. Finney's view at that time that until the formal contract was signed by the authorized officials of the Pan American Petroleum & Transport Company and the authorized officials of the Government there was not a [294—216] binding contract between the parties. After Mr. Cotter argued that the Secretary of the Navy should sign the contract and the contract was drafted for the signatures of the parties, the witness thinks the first draft thereof provided for the Secretary of the Navy to join; recalling that the contract of April 25, 1922, in evidence, recites in its opening clause that the United States of America, one of the parties, is acting in that behalf by Edward C. Finney, Acting Secretary of the Interior, and Edwin Denby, Secretary of the Navy, Judge Finney testifies that he gave the directions for the drafting of the contract in that form, giving those directions to Ambrose or Bain.

Before the contract was signed Mr. Cotter called upon the witness regarding another subject, namely, the preferential right clause that was to go into the contract, and when Cotter called on the witness there was a conference at which there were also present Admiral Robison and Bain or Ambrose; Cotter wanted a definite assurance that his company would be given a lease for a definite piece or pieces

(Testimony of E. C. Finney.)

of land within a certain specified time; in other words, a general preference that his company would be given a lease if and when leases were made he thought did not offer enough inducement; as to the preferential right clause as it was being drafted to go into this contract, Cotter said it gave them nothing definite; nothing certain, and he said something about preferring to have the Government accept Proposal A. The letter of April 25, 1922, Plaintiff's Exhibit No. 125, was dictated by the witness in the presence and with the assistance of Admiral Robison, Mr. Ambrose and Dr. Bain, and in that letter there is stated in substance what Mr. Cotter had previously said in the conference about which the witness has just testified, the part of the letter containing the substance of what Mr. Cotter had said in that conference being this: "It is evident from our conversation of April 18 that your interpretation of preferential right was to the effect that the Pan American Petroleum and Transport Company desired the right to lease certain specified lands in Naval Petroleum Reserve No. 1 as well as preferential right to lease other land in Naval Petroleum Reserve No. 1 to the extent described in Article 2 of the contract. It is also my understanding from your conversation that unless the Pan American Petroleum & Transport Company can get a lease to certain lands your company would not desire to enter into a contract [295—217] under the terms outlined in Proposal B and preferred the Government would accept Proposal A." There was

(Testimony of E. C. Finney.)

further read to the witness from the above referred to letter of April 25, 1922, Exhibit No. 125, the following: "It is my understanding that unless you secure definite assurance from the Department that your company would obtain leases for certain tracts in Naval Reserve No. 1 the Pan American Petroleum & Transport Company would prefer not to enter into a contract as outlined in Proposal B," and he was asked where he got that understanding from, and answered "Cotter so stated." Mr. Finney testified that the schedule of royalties set forth in said last mentioned exhibit was suggested by Dr. Bain and Mr. Ambrose. Admiral Robison, Dr. Bain and Mr. Ambrose collaborated in getting up that letter of April 25, 1922, a few days before its date, Ambrose left on the 20th, so it must have been between the 18th and 20th; he has some recollection that he sent draft of that letter with Mr. Ambrose on the 20th, but does not seem to be absolutely positive of that; there is no way that the witness knows by which can be fixed now the date upon which that letter was prepared; he has not with him the retained file copy, but he does not think that that would indicate the date of drafting; he is not absolutely certain that the letter was drafted prior to the departure of Ambrose from Washington on April 20th but according to his best recollection it was dictated in the presence of Robison, Ambrose and Bain and he knows he had their help in writing it. He knows that Admiral Gregory outlined a plan of procedure to be followed under the contract

(Testimony of E. C. Finney.)

of April 25, 1922, but does not recall the date on which this was done. Thereupon there was offered in evidence Defendants' Exhibit "JJ," reading as follows: [296—218]

DEFENDANTS' EXHIBIT "JJ."

"NAVY DEPARTMENT.

"BUREAU OF YARDS AND DOCKS.

"Washington, D. C.

"April 22, 1922.

"Contract for Fuel Oil Storage Plant to be constructed by the Department of the Interior at the U. S. Naval Station, Pearl Harbor, T. H., for the use of the Navy Department.

"1. Contract consists of two principal parts. The first is the exchange of crude oil for fuel oil, the fuel oil to be delivered in tankers at Pearl Harbor. The second part is the construction of oil storage and the receiving of oil in the tanks at Pearl Harbor.

"2. The Department of the Interior should retain direct control of the oil business involved in this contract, in other words, of the first part of the contract mentioned above.

"3. It is proposed that the Chief of the Bureau of Yards and Docks be made the representative of the Secretary of the Interior in handling the second part of the contract as noted above. This would involve, first, all technical matters in connection with the plans and specifications for storage, and which in its general phases can be most expedi-

tiously handled in Washington. Second, the supervision of construction work in the field at Pearl Harbor, and third, the receiving of the oil at Pearl Harbor from the tankers and placing same in tank storage as it becomes available under this contract until such time as the completed plant shall be turned over to the Government.

"4. This will in no way involve the functions at present exercised by The Chief of the Bureau of Engineering in dealing with the Secretary of the Interior in regard to oil matters in general, since the only function of the Chief of the Bureau of Yards and Docks, as representative of the Secretary of the Interior, would be the technical work of constructing the tanks, the receiving and storing of the oil during construction and reporting to the Secretary of the amounts received.

"5. The Chief of the Bureau of Yards and Docks representing the Secretary of the Interior will then designate the Commandant at Pearl Harbor as representing the Bureau in the field. The District Public Works Officer will be designated as the Officer-in-Charge of the work under paragraph 215 of contract specifications. Lieutenant Keating will receive orders from the Secretary of the Navy to report to the Commandant of the Fourteenth Naval District for duty under the District Public Works Officer solely in connection with this contract.

"6. Notice of any appeals on the part of the contractor from the decision of the Officer-in-Charge of the work and the reasons therefor shall be forwarded promptly being routed through the Com-

(Testimony of E. C. Finney.)

mandant and the Chief of the Bureau of Yards and Docks on their way to the Secretary of the Interior.

"7. On account of the importance of this contract and of the fact that it is on a cost plus basis with a bonus and penalty clause as to date of completion of the work, and of the importance of the Government causing no delay, it is stipulated that the inspection [297—219] force to be provided by the Navy Department shall report for exclusive service on this contract, unless otherwise approved by the Bureau of Yards and Docks.

"8. The Chief of the Bureau of Yards and Docks shall be given authority of the Secretary of the Interior to appoint boards of Government representatives in connection with changes in construction work as provided by paragraph No. 230 of the specifications provided that any changes in contract be submitted to the Secretary of the Interior for approval.

"9. It is proposed to prepare necessary letters for the signature of the Secretary of the Interior and Secretary of the Navy to accomplish the above." [298—220]

Thereupon the witness testified that the fact is that the origin of the plan of procedure contained in the letter dated May 5, 1922 (Exhibit No. 129), signed by the witness and approved by Secretary of the Navy Denby, was the foregoing memorandum from the Bureau of Yards and Docks (Exhibit "JJ") prepared by Admiral Gregory, and the neces-

(Testimony of E. C. Finney.)

sity of having a well-defined plan of procedure to be followed in the offices and bureaus.

After the contract had been signed the matter of keeping accounts thereunder, both of fuel oil received, storage work completed, and crude oil delivered, was turned over to the accountants of the Bureau of Mines, but the witness has no personal knowledge of the details, and relied on the accountants; some of the correspondence with respect to the operations under the contract was drafted in the Bureau of Mines and signed by the witness and, if the files so show it, some so drafted was signed by Secretary Fall. In June, 1922, there arose a question about what should be done with approximately 54,000 barrels of fuel oil that had accumulated prior to the making of the April 25th contract, which oil was due to the Navy from the Standard Oil Company, and the witness took that matter up with the Secretary of the Navy by his letter of June 6, 1922, upon which the Acting Secretary of the Navy, Colonel Roosevelt, placed endorsement dated June 16, 1922, said letter and said endorsement being thereupon received in evidence as Defendants' Exhibits "KK" and "LL," respectively, and they read as follows: [299—221]

DEFENDANTS' EXHIBIT "KK."

"June 6, 1922.

"The Honorable,

"The Secretary of the Navy.

"Dear Mr. Secretary:

"In response to your letters of October 25 and

November 15, 1921, this Department arranged with certain oil companies in California for the exchange of royalty oil from the Naval Reserves in California for fuel oil at tidewater for use of the United States Navy, but following your letter of December 14, 1921, it was agreed to exchange the royalty oil for the erection and filling of storage. During this interim, however, certain exchanges had been entered into with certain oil companies for the exchange of royalty oil for fuel oil. The Standard Oil Company now refuses to deliver other than fuel oil for the November and December royalty oil and this cannot be applied to the credit of the Pearl Harbor contract.

"I have therefore to request that the Navy Department make arrangements with the Standard Oil Company of California for the delivery to the Navy of 54,661.73 barrels of fuel oil which I understand the Standard Oil Company will deliver either at the port of Richmond or San Pedro, California. I would appreciate being advised as to whether or not the Navy can arrange for the use of this fuel oil.

"Respectfully,

"E. C. FINNEY,,

"Acting Secretary."

DEFENDANTS' EXHIBIT "LL."

"1st Endorsement June 16, 1922.

"From: Acting Secretary of the Navy.

"To: Bureau of Supplies and Accounts.

(Testimony of E. C. Finney.)

"Subject: Disposition of certain royalty oil from
Naval Petroleum Reserves Nos. 1
and 2.

"1. Forwarded for action.

"2. It is desired that, if practicable, the fuel oil which the Standard Oil Company of California desires to deliver to the Navy under existing contracts be stored at the Naval Station, Pearl Harbor. If this be not practicable, it is then desired that a similar amount of fuel oil be set aside at that Station as a reserve and the amount of oil to be received from the Standard Oil Company of California be expended for current use in the Fleet.

"3. Attention is invited to the department's policy of not using, under any consideration at all avoidable, royalty oil from the Naval Petroleum Reserves for current use. It is, therefore, desired that every effort within practical limits be made to store this oil for reserve purposes rather than to use the same at the present time.

"/S/ T. ROOSEVELT." [300—222]

As testified by the witness on direct, he took no part in and knew nothing about the negotiations for the contract and lease of December 11, 1922, until after they were consummated; his office is on one floor of the Interior Department Building and the Secretary's office is on another; that is the largest office building owned by the United States and has capacity for about 5,000 people and it has been the witness' custom to go to the office of the Secretary of the Interior only when he had some

(Testimony of E. C. Finney.)

matter to bring up to the Secretary or when the Secretary sent for him; the office of the Director of the Bureau of Mines is located on the third floor of the same building and the director of that bureau frequently had dealings with the Secretary of the Interior directly during the period about which this witness has testified; the lease of July 8, 1921, with the United States Midway Oil Company was not signed or executed by Mr. Finney and he did not take any part in negotiating that lease; that is true also of the lease of July 12, 1921, with Pan American Company; the leases which followed the nine telegrams of November 14, 1921, were signed by the witness but he did not know of the telegrams at all until after they were sent out and all that he did with respect to those was that when the lessees accepted the terms of the telegrams he signed the leases that were made.

Leases between the Government and the Boston Pacific Oil Company covered a tract of land in Reserve No. 2 and a number of producing wells in that reserve which were leased by Secretary of the Interior Payne under Section 18 of the leasing act; subsequently the lessee made application for a lease to five additional new wells and that application was taken up by Secretary Payne with the Navy and finally presented to the President who approved the leasing of the five additional wells which was done; there were no competitive bids obtained for that; that was authorized August 24, 1920, and the lease was dated as of July 1, 1920,

(Testimony of E. C. Finney.)

and signed by John Barton Payne; there was another lease to the Consolidated Mutual Company in Reserve No. 2, which company had a lease for certain producing wells and made an application for a lease of the entire area covered within the mining claim; that application was considered by Secretary Payne and he recommended that a lease be made on the ground that there was water intrusion and that the area should be drilled up; that recommendation was for the leasing of the entire section of 640 acres; Secretary Daniels opposed that but [301—223] finally consented to a lease of 120 acres and President Wilson on February 16, 1921, authorized such a lease which, bearing that date, was signed by Secretary John Barton Payne; there was no competitive bidding for that.

As regards the leases made with Titus and others about which the witness has testified, he has no data showing the actual production of those wells and could not testify himself, either from memory or from any data, as to the average royalty received by the United States from those leases; that data is kept in the Bureau of Mines.

TESTIMONY OF A. L. WEIL, FOR PLAINTIFF.

A. L. WEIL, called as a witness on behalf of the plaintiff, testified that he is a member of the bar, is general counsel for the General Petroleum Company; he remembers a visit of Dr. Bain to the offices of that company in San Francisco in January, 1922, when there was a conference into which witness

(Testimony of A. L. Weil.)

was called; Dr. Bain and Mr. Ambrose asked the General Petroleum Company to bid on a proposition of building tankage at Pearl Harbor in exchange for royalty oils on the naval reserve; the witness discussed with Dr. Bain the matter of the legality of the proceeding, that is, the authority of the Secretary to enter into any such agreement, and he stated to Dr. Bain the views he held on the subject. Over the objection of defendants made on the same grounds as those interposed to the receipt in evidence of the opinion of the witness Sutro, which objection was as to this witness also overruled and an exception reserved, and subject also to the right of the defendants, granted by the Court, to move hereafter to strike out the testimony, Mr. Weil was permitted to, and did, testify that he told Dr. Bain that he very seriously doubted the authority of the Secretary to enter into such an agreement; in response to Dr. Bain's suggestion that they had gotten the opinion of the Solicitor of the Department the witness said that was not satisfactory and asked why the opinion of the Attorney-General had not been obtained and if that opinion would be obtained, telling Dr. Bain that General Petroleum would reconsider the question in the light of the views expressed by the Attorney-General; Dr. Bain said that he would not get the opinion of the Attorney-General, but witness does not remember what reason he gave; there were no papers in the nature of a proposed contract submitted to the witness at that time, all this was oral and occurred about January 3, 1922. [302—224]

**TESTIMONY OF LUTHER E. GREGORY, FOR
PLAINTIFF.**

LUTHER E. GREGORY, a witness called on behalf of the plaintiff, testified that he is Chief of the Bureau of Yards and Docks of the United States Navy, with the rank of Rear Admiral, and has held that office since early in January, 1922; his career in the Navy has been devoted to that Corps which is known as the Civil Engineering Corps of the Navy, during his entire service since 1898; his Bureau was first requested in December, 1921, before he became Chief, to prepare plans and specifications for fuel oil and storage station at Pearl Harbor, Hawaii; he took the oath of office as Chief of that Bureau January, 5, 1922, and from that time his Bureau continued in the professional relation of civil engineer, preparing plans and specifications in relation to the proposed Pearl Harbor fuel oil storage contracts.

Admiral Gregory produced a map of Pearl Harbor Naval Station, which shows the layout of all the tankage which has been built at that station, and another map of Ford Island, showing the gasoline storage station, which map was introduced in evidence as Plaintiff's Exhibit No. 131, exhibited to the Court; and used by the witness in testifying, and is appended to this statement of evidence, under the foregoing exhibit number; on the map, the numbers indicate the tanks constructed under the two contracts in issue, this being for convenience of designation.

Under the contract dated April 25, 1922 (Ex.

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4
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(Testimony of Luther E. Gregory.)

"B" to the Amended Bill of Complaint), 30 tanks of a capacity of 50,000 barrels each were built; these tanks, together with 9 others formerly on the property, are shown in a block at the lower left-hand corner of Exhibit 131; these 30 new tanks were constructed for reserve fuel.

Under the second contract dated December 11, 1922 (Ex. "C" to the Amended Bill of Complaint), there have been constructed [303—225] 17 tanks, the location of which is shown at the extreme right-hand of the map, Exhibit 131. In addition to these, the gasoline storage plant is located on Ford Island, a map of which was produced by the witness and offered in evidence as Plaintiff's Exhibit No. 132, and under that number is appended to this statement; Ford Island is to the north of the territory shown on Exhibit 131; on that island there are 9 gasoline tanks of a capacity of 225,000 gallons each, which were constructed there under the contract of December 11, 1922.

The area which was selected for the first group of tanks, under the April 25th contract, adjacent to the old group, was entirely insufficient for all of the storage which the Department required; also the wharfage facilities at that portion of the Navy Yard, adjacent to the old coaling plant, shown on the map, were not only inadequate in themselves, but did not even permit of the possibility of enlargement to be suitable for a proper tank wharf. As it became necessary to use additional space at the easterly end of the Navy Yard, the Bureau found

(Testimony of Luther E. Gregory.)

it possible to provide, near the easterly area, a wharf which would have proper facilities as to length and space and dredging, although it would require some little additional work, and therefore Merry Point, at the southeast end of the station, was selected, and a wharf which would be quite close to the tankage, as well as away from the industrial portion of the Yard, was constructed under the contract, and is shown near the center of Exhibit 131; the dredging was done, and the sea-wall built surrounding that point, making it a triangular-shaped pier, giving a length of about 800 feet on one side, and 1200 feet on the other, which pier is shown by a double line running outside a point marked "Merry Point" on Exhibit 131.

The contract called for the building of a quay wall around the triangular-shaped area, and that was built under specification of reinforced concrete, on reinforced concrete pilings, this [304—226] being required on account of the substratum, and for the further reason that the Navy wanted a fire-proof structure; any other would have been dangerous, where oil was handled. It was necessary to dredge a channel for a short distance in the immediate vicinity of the pier to get a sufficient depth for the ships that would use the wharf; which wharf served not only the group of tanks shown in the extreme southeast corner of the map, but served the second group at the extreme right, built under the second contract, and also served a group at the west end of the Yard, because of a pipe-line

(Testimony of Luther E. Gregory.)

connection between the two areas; in other words, all of the new tankage on the station proper, which, except Ford Island, is served by pipe-line facilities from the new wharf.

In connection with the second project, it was desired by the Navy to have a gasoline storage plant, as well as a fuel oil storage plant, and that has been constructed, and may be termed "the Ford Island station." This required, in addition to the tanks, a small amount of dredging, and the construction of a wharf, in order that vessels bringing gasoline could come up alongside and pump the gasoline into the tanks, and also the providing of the usual protective devices, and the connecting up with pipe-lines; that has been made a complete gasoline storage plant in itself.

Of the construction cost, the items embraced under the April 25th contract, approximately one-third consists of nontankage items, under which terms are included dredging, wharfage and things other than tanks, in which to put the oil, such things as piping and embankments around tanks, being considered absolutely tankage items; when the second project, under the December 11th contract, is taken into consideration, the percentage of non-tankage items will greatly drop, because with that the Department did not have any wharfage, except at Ford [305—227] Island. In the second project, things not strictly tankage were very much less in proportion to the whole cost than in the first project, the dredging and dock work done

(Testimony of Luther E. Gregory.)

under the first contract being equally available for the second tank farm. There was not a very considerable amount of nontankage work in connection with the second project, the witness' impression being that it would not be over 5%.

There was no total estimated cost of the second project, by reason of the fact that that was strictly on a cost basis, and subject to competition of all of the various divisions of the work.

When the first project was contemplated, there was some current use oil storage at Pearl Harbor, but no fuel oil reserve, or provision therefor; in other words, this was the first reserve fuel oil station that the Navy adopted.

As to the plans for the taking up of a fuel reserve project through these contracts, after the completion of this at Pearl Harbor, no definite consideration was given to that, except right in the Bureau's own designing office. The matters were not taken up with the Pan American Company at all. It was not the purpose to take up anything in connection with that until the Pearl Harbor matter was finished. When that was finished, it was the intention to go on to another. The Navy officials tentatively had in mind that there would be adopted a plan to go on with another fuel reserve base when this one at Pearl Harbor was completed.

In the United States Navy, there was in 1921 and 1922, and still is, a General Board, and subject to its approval, plans for the development of the

(Testimony of Luther E. Gregory.)

Navy's physical equipment are adopted from time to time. These are known as the War Plans. As regards the plans of the General Board with reference to naval fuel oil storage, as worked out prior to the autumn of 1922, that Board had been working on this proposition for a long time, [306—228] and up to the end of the autumn of 1922 it had formulated plans for storage, the details of which have not been given out, and the Department does not care to have them given out. The approximate cost would be, as stated by the Secretary of the Navy before the Public Lands Committee a year ago, in the neighborhood of \$103,000,000, approximately one-half of which would be for storage facilities, and one-half for the contents. The witness estimates that the total cost of the two Pearl Harbor projects will approximate between seven and a half million dollars and eight million dollars, which will include tankage and all of the equipment that had to be furnished with it, and exclude the contents.

The War Plans which the witness has already referred to, and which contemplate a sum to be spent for reserve fuel storage stations at various points, have been kept within the Navy Department and have not been presented to Congress; it is subject to revision from time to time by the heads of the Navy charged with responsibility in connection with such matters.

The two projects embraced in the contracts of April 25th and December 11, 1922, in issue in this

(Testimony of Luther E. Gregory.)

case, were not submitted by the Department to Congress for approval.

In addition to what has already been referred to, the specification for work under the second contract included a barracks for the custodians of the plant, who had to reside right within the area.

Each tank in the three areas at Pearl Harbor is surrounded by an embankment and a complete fence has been built around the areas, at the southeast end, the easterly tank farm, and the western area.

Under the April 25 contract, there was no plan to build any tankage on the Marine Corps reservation, which is shown along the southerly boundary of the Navy Yard; eight tanks [307—229] were designed to be placed in the southeast corner of the map (Ex. 131) immediately below the place called Merry Loch; it was found that the foundation conditions in the area immediately south of Merry Loch were very soft, and would involve very expensive construction to make the foundation satisfactory; so arrangements were made to transfer the location of eight tanks from that area to the westerly edge of the Marine Corps reservation; by so doing a very great expense was avoided.

In regard to the location of tanks under the second contract, the requirement of the General Board was such that if the Department had adopted the same size of tank that it had followed in the original work, namely, 55,000-barrel tanks, the area would not have been found sufficient; the

(Testimony of Luther E. Gregory.)

Bureau, of which the witness is head, therefore designed a new tank of the capacity of 150,000 barrels each, and found that upon laying these tanks down upon the ground, there was just the proper amount of room in which to get the storage which the General Board wanted. The Bureau therefore adopted for the second contract a size of tank very much larger than any other that had ever been constructed before for that purpose, namely, 150,000 barrels each: In order to work this plan out, the Marine Corps was requested to surrender sufficient land for those tanks, and this was agreed to.

A letter dated April 3, 1923, was received by the Bureau of Yards and Docks, and together with endorsement thereon and enclosures therewith, was admitted in evidence as Plaintiff's Exhibit No. 33, as follows:

U. S. EXHIBIT No. 133.

U. S. NAVAL STATION, HAWAII.

Pearl Harbor, T. H.

Public Works Department.

Apr. 3, 1923.

From: Public Works Officer.

To: Bureau of Yards and Docks.

Via: Commandant. [308—230]

Subject: Contract 4800—Additional Fuel Oil Storage, U. S. Naval Station, Pearl Harbor, T. H. Location of Tank Sites.

Reference: (a) Station Dispatch 8003—of April.

Enclosure: (A) Station Drawing No. N-259 and estimate.

1. In view of the fact that the contractors will open bids in New York next Saturday for the proposed earth work and berms for the fuel oil storage back of Quarry Point, the great cost entailed by using this site is believed to be such as to warrant a full reconsideration of its use. Several contractors have been out here looking over the work, and indications are that they are much discouraged as to the possibility of giving a satisfactory price for this work.

2. Tentative estimates based on the quantities for which bids are being asked, indicates that the average cost of excavation per tank at the Quarry Point site will be about \$53,000.00 to which is to be added the dikes, surfacing, concrete core walls and reinforcing material, making the average estimated cost per tank \$75,000.00.

3. Against this is submitted an estimate for using land similar to that of the lower tank site and Marine Reservation, including the land, the use of a favorable site will effect a saving of \$45,000.00 per tank, or a total of \$800,000.00 for the project.

4. The site recommended is a strip of land running long the east side of the channel from the Naval Station to the Bishop Point Naval Reservation and bounded by the O. R. & L. R. R. on the east. This strip is now uncultivated, covered with a light growth of algaroba, and is ideal land for

the foundation of tanks. The slight cover of soil is just enough to build the berms with, consequently there is the great saving over the heavy rock excavation entailed at the Quarry Point site. Without a doubt it should be possible for the contractors to arrange by license, lease or purchase to acquire the use of [309—231] this strip of land. Its acquisition under this contract is certainly fully justified, when it results in a net saving of some \$800,000.00. It is believed that by placing the matter in the hands of the contractor, this site could be obtained without any loss of time, as there would result a great saving in the time of construction by the omission of all the heavy work planned for Quarry Point.

5. Plan No. N-259 is forwarded herewith, on which has been indicated a feasible location for the tanks.

6. Another important consideration in this connection is the great desirability of the Naval Station having full control of the channel shore line. The present coaling and fuel oil pier will serve these tanks for the present, but for rapid fueling of the fleet it will be possible at any time to install a series of dolphins along the channel and very much expedite the furnishing of fuel to ships.

7. It is recommended that no award be made on the Quarry Point proposition in view of the excessive cost of this project:

(Sgd.) C. A. CARLSON.
C. A. CARLSON.

Commandant's Office,
U. S. Naval Station,
Pearl Harbor, Hawaii,
Received,
A. M. 10, Apr. 3, 1923.

FIRST ENDORSEMENT.

U. S. Naval Station, Pearl Harbor, T. H.

5 April, 1923.

SECRET.

From: Commandant.

To: Bureau of Yards and Docks.

Via: Chief of Naval Operations.

Subject: Contract 4800—Additional Fuel Oil Storage, U. S. Naval Station, Pearl Harbor, T. H.—Location of tank sites.

Enclosure: (B) Original of Commandant's letter
No. 966 of 4 Apr., 1923.

1. Forwarded approved subject to the comments contained in Commandant's secret letter No. 966 of April 4, 1923, and forwarded herewith.

(Sgd.) E. SIMPSON.

E. SIMPSON.

Operations Confidential files. [310—232]

Received

Apr. 20, 1923. 23.

Navy Department.

File No. SC 131-25:6.

Received 12:10 P. M.

April 21, 1923.

R. E. B.

E. C. S.

PART OF U. S. EXHIBIT No. 133.

Enclosure: (A)

COMPARISON OF COST OF TANK SITES ON
THE TRACT EAST OF QUARRY POINT
AND ON THE TRACT OF THE
BISHOP ESTATE DRAWING

No. N-259.

Quarry Point Site.

This estimate is based on the quantities of excavation, dikes, etc., shown in the invitation of the Pan-American Petroleum & Transport Company to bidders on Contract 4800, which are given below, together with the Yard's estimate of unit prices and total costs, which covers 18 tanks. No allowance is made for excavation for tank foundations or for sand foundations since these items are identical for both sites.

Excavation, 480,000 cu. yds. at \$2.00..	\$ 960,000.00
Rock filled dikes, 150,000 cu. yds., \$1.00	150,000.00
Surfacing dikes formed in excavation,	
35,000 sq. yds. at \$1.00	35,000.00
Concrete core walls 6,000 cu. yds. at	
\$30	180,000.00
Reinforcing steel, 250 tons at \$120.00..	30,000.00
<hr/>	
Total cost of 18 tank sites	1,355,000.00
Cost of one tank site	75,300.00

This estimate does not include the securing and placing of borrowed material which may be necessary, or the stripping and refilling which might be required.

Bishop Estate Site.

Refer to Drawing N-259.

The minimum distance center to center of tanks is 450 feet. The site is practically level, and consists of earth about six inches to one foot deep overlying coral. To form berms having [311—233] a capacity of $1\frac{1}{2}$ times the capacity of a tank will require about 4,000 cu. yds. of excavation per tank, which is equivalent to a six-inch depth over the area. While no extended examination has been made, it is believed suitable dikes can be constructed of the material on the site without core walls.

Total excavation, 4000x18—72,000 cu.

yds. at \$4.00	\$228,000.00
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Total val. of dikes, 4000x18—72,000 cu.

yds. at \$2.00	144,000.00
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Acquisition of 110 acres of land at \$1000	110,000.00
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\$542,000.00

Cost of one tank site	30,000.00
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Comparison.

The saving per tank is, therefore, as follows:

Cost per site at Quarry Point	\$ 75,000.00
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Cost per site at Bishop Estate site,	
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including cost of land	30,000.00
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Saving per site	\$ 45,000.00
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Total saving	\$810,000.00
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Approximately 110 acres of land will be required for the Bishop Estate Site.

The map in evidence, Exhibit 131, does not show the privately owned land which the foregoing memorandums suggested could be acquired; that land is

located about two or three miles south of the station which the map showed.

Plaintiff thereupon offered in evidence as Exhibit 134 the following communication from the Commandant of the Naval Operating Base at Pearl Harbor to the Chief of Naval Operations, Washington, D. C., and the same was received in evidence, and so much thereof as was read to the court, the irrelevant portions being omitted, reads as follows:

PLAINTIFF'S EXHIBIT No. 134.

“Office of the Commandant,
Fourteenth Naval District
and

Naval Operating Base, Pearl Harbor, Hawaii.

SECRET. [312—234]

4 April, 1923.

From: Commandant,

To: Chief of Naval Operations.

Subject: Recommending change in site for additional fuel oil storage.

References: (a) Bureau of Yards and Docks contract 4800.

(b) Station dispatch 1004-1705 of April 1923 to Chief of Naval Operations.

1. The estimates which present the proposition of changing the site of the additional fuel oil storage contemplated on Quarry Point, have just today been brought to the Commandant's attention. It will be seen that an estimated saving of some \$800,-

000 would result if the change in the site as proposed is approved.

2. The inadvisability of locating the extensive fuel oil storage so close to the Naval Base has been recognized for some time, but as these contracts have been largely handled in the Department and further because of their peculiar nature embodying no actual appropriation from Congress, the Commandant has not seen fit to offer serious objections to their location.

There is no question, however, but that the proposed location of the contract hereunder considered is very undesirable from many points apart from its cost. It lies on much higher ground than the Naval Base activities, ground which slopes very abruptly down to the waters surrounding the Magazine Island and Submarine Base. Furthermore it lies directly to windward of the Station. The prevailing wind is from the northeast during the majority of the year. . . .

3. The Commandant feels that the location for fuel oil storage should be removed from the Naval Station and sees no objection in this connection to distance, as the oil can be led to points desired by pipe lines. It further seems undesirable to locate any such facilities as fuel oil storage in such a position as to interfere with expansion of other activities which are necessary in the immediate vicinity of the Base itself. . . . [313—235]

9. Owing to the peculiar nature of the contracts in connection with the fuel oil storage of this Base, it appears possible to have the contractors negotiate for the additional land thereby avoiding complica-

tions and the usual delays which are always encountered when the Government attempts to negotiate directly for the acquisition of land.

10. In view of the above considerations and the fact that the proposed site for the additional fuel oil storage as given hereunder would not interfere with the use of the shore line in question for the berthing facilities and even for additional supply facilities by rail from the Naval Station, the Commandant is led to recommend that the change be made and that the contractors be authorized to negotiate for the license, lease or actual purchase of the land in question. He, therefore, has sent today such recommendations by dispatch, as the contracts are scheduled to be opened in New York before this letter reaches the Department.

11. The land in question belongs to an estate which, it is feared, may object to sell. As, however, it is not land that is useful for sugar growing or even for residential purposes until water is available, it is thought probable that it can be leased or obtained on license, as is the custom of these Islands. As the site is considered so satisfactory, and in view of its importance as stated above, it would seem warranted to obtain it in any way possible in case actual purchase is found impossible.

The foregoing exhibit is signed by Admiral Simpson. Upon that exhibit was placed the endorsement by which it was forwarded from the Chief of Naval Operations to the Chief of the Bureau of Yards and Docks, which endorsements follows the same exhibit, and were received in evidence and reads as follows: [314—236]

2nd Indorsement
Navy Department.

SECRET.

Apr. 25, 1923.

From: Chief of Naval Operations.

To: Chief of Bureau of Yards and Docks.

SUBJECT: Contract 4800—Additional Fuel Oil
Storage, U. S. Naval Station,
Pearl Harbor, T. H.—Location of
tank sites.

Reference (a) Comdt. 14th Naval District Confidential Despatch 0004 received 5 April 1923.

1. Forwarded, with the request that the Chief of the Bureau of Yards and Docks prepare a reply to this correspondence for the Secretary's signature along the lines discussed by the Acting Chief of Naval Operations and the Chief of the Bureau of Yards and Docks at the time of the Receipt of Reference (a).

A. H. ROBERTSON,
Acting.

Apr. 26, 1923.

4800. SECRET. 3rd Indorsement.

From: Chief of Bureau of Yards and Docks.

To: Office of the Secretary of the Navy.

Subject: Contract No. 4800, Additional Fuel Oil
Storage, Naval Station, Pearl Harbor;
forwarding letter prepared for the
signature of the Secretary.

1. The Bureau is forwarding herewith letter

558 *Pan American Petroleum Company et al.*

(Testimony of Luther E. Gregory.)

prepared for the signature of the Secretary, as requested by the 2nd indorsement.

(Sgd.) L. E. GREGORY.

Operations Confidential Files.

Received

May 8, 1923.

Navy Department.

The witness identified a letter dated May 3, 1923, as having been prepared by him for the signature of the Secretary of the Navy in answer to the foregoing correspondence (included in Exhibit 134) and the said letter was received in evidence as Plaintiff's Exhibit No. 135, and is as follows: [315—237]

PLAINTIFF'S EXHIBIT No. 135.

SECRET.

May 3, 1923.

From: The Secretary of the Navy.

To: Commandant, Naval Station, Pearl Harbor,
T. H.

Subject: Contract No. 4800. Additional Fuel Oil
Storage, Naval Station, Pearl Harbor.

References: (a) Station dispatch 1004-1705, April,
To C. N. O.

(b) Commandant's letter No. 966,
April 4, 1923.

1. Throughout the negotiations regarding fuel oil storage under Naval Petroleum Reserve contracts, the Department has considered it inadvisable to arrange for any construction on other than Government-owned land. Accordingly favorable action on the recommendation in references, regard-

(Testimony of Luther E. Gregory.)

ing the removal of the Pearl Harbor storage to land to be purchased by the contractor at Bishop's Point, can not be given.

EDWIN DENBY.

The principal reason why it was thought inadvisable for the contractor to obtain land under these contracts was that it was fuel to be unnecessary; the Navy had at every station where fuel oil storage had been projected sufficient Government land upon which to build the storage, and at this particular place it was not felt that the objections raised by the officers at the Yard were sufficiently valid to change the Department's plans. The land referred to as a portion of the Bishop estate was some distance to the south of the Naval Station, and completely separated from it, which would make it necessary to build an entirely separate plant, and pumping station, and separate guardhouses, and as long as the Government had the area available at the easterly edge of the Navy Yard, which was not very suitable for either military or industrial purposes, and was sufficient for this purpose, the Navy Department thought it wiser to put the full storage there; witness thinks anyone who is familiar with the method of storage of oil on the west coast [316—238] is fully aware of the fact that hillsides are utilized, and it is not necessary to have level land; the Department considered that the officers at the station did not present valid reasons for making the change, and the considerations men-

(Testimony of Luther E. Gregory.)

tioned by the witness overcame, in his mind, the possible saving.

Cross-examination.

On cross-examination, Admiral Gregory testified that he had received no instructions specifically not to discuss the Department's present plans as to future reserve storage projects, but through general instructions; officers of the Department had not discussed War Plans with anybody outside of their own circle at any time when they received those plans; these are discussed only with whom it is necessary; that is the rule of the Navy Department, and it is because of that rule that the witness on direct examination stated that he did not desire to make public disclosure of those plans. The fact is, in so far as the witness feels at liberty to testify regarding it, that the General Board of the Navy, and the War Plans division thereof, have developed for the National Defense a plan to be carried on over a course of years, which looks to the establishment at strategic points of fuel stations for the use of the United States Navy; and those plans, as tentatively estimated, covering a number of years in the future, would involve, for construction of storage plants and for the contents thereof, an expenditure of approximately \$103,000,000, as disclosed by the Secretary of the Navy, Mr. Denby, to the Senate Public Lands Committee early this year; these plans are subject to future changes, but they are the existing plans in the Navy Department, and they are now the same plans that

(Testimony of Luther E. Gregory.)

were formulated a few years ago as approved War Plans of the Navy.

As testified on direct, the Bureau of Yards and Docks was, in November or December, 1921, directed to prepare plans for what is known as the Pearl Harbor project; since, Admiral Gregory has assumed duty as Chief of that Bureau, on January 5, [317—239] 1922, and he acquainted himself as rapidly as he could with the status of this and other matters pending in the Bureau, and learned how far that Bureau of the Navy Department had progressed with this first Pearl Harbor project. In the course of time, when these projects were actually embraced in contracts, one of them, dated April 25, 1922, was given a Bureau of Yards and Docks serial number, 4650, and the latter one, dated December 11, was given the Bureau's number, 4800, and they were thereafter known by these numbers in correspondence and other papers relating to them.

When Admiral Gregory familiarized himself with this matter, in January, 1922, the plan for the first project had been forwarded from the Bureau to the Secretary of the Navy; but they were only general plans; it had not been possible in the short time that was given to prepare them and make these plans comprehensive, nor, in his opinion, were they sufficient to enable any party to make an intelligent bid, and the feeling in the Bureau was that if any work should be done, that the plans should be drawn in greater detail, and that the Bureau should get more specific information from the Navy Yard

(Testimony of Luther E. Gregory.)

station in Hawaii as to the conditions on the ground, the foundations, the depths of water, the nature of the underlying soil, the amount that the piles would penetrate, and things of that sort, all of which would be useful in informing prospective bidders so that they could intelligently formulate real bids; in fact, the station had been requested early in December, when the Bureau was first instructed to proceed with these plans (the witness throughout his testimony referred to the office of the Commandant at Pearl Harbor, Hawaii, as "the station" and to the Bureau of Yards and Docks of the Navy Department, Washington, as "the Bureau") to secure that information and forward it; the Bureau knew, therefore, that the Station was making these investigations, but the preliminary plans had to be submitted [318—240] before that information was available. From the time when the witness took this matter up, he had frequent talks with Admiral Robison, Chief of the Bureau of Engineering, and he may have talked things over in a very general way with the Secretary of the Navy, but the Secretary was, of course, not familiar with the technical questions which were the paramount questions the witness had to consider, so that his talks with the Secretary of the Navy were very brief on that, and only in a very general way. He does not recall dates or anything specifically about these conferences with the Secretary of the Navy. As regard any talk or discussion during the progress of negotiations leading up to the contract with officials of the Interior Department, Admiral Gregory thinks

(Testimony of Luther E. Gregory.)

that in the formative stage of this work, he met Secretary Fall and Dr. Bain to discuss general features of the work; he does not recall the dates or just what particular subjects were discussed or considered.

A memorandum dated February 14, 1922 (Ex. No. 79), sent by Admiral Gregory to Admiral Robison, resulted from a conference the witness had with Admiral Robison in which the latter said that it was the expectation that the work would be done upon the basis of cost plus a percentage of profit, and Admiral Gregory told Admiral Robison he thought that would be undesirable; that the Navy ought to follow some other plan, and he followed up that conversation with the memorandum mentioned, which was for the purpose of putting on record and showing what he considered to be the objection to that method, and what he suggested should be the means of carrying out the work. The witness thinks this subject of his views on cost plus versus lump sum plans was discussed with either Secretary Fall or Mr. Finney, but certainly it was discussed with Dr. Bain, in a very general way, and witness understood that the objection which he raised would be given consideration, and that the nature of the contract would [319—241] be made to agree with his recommendation. In February or March, 1922, Admiral Gregory became acquainted with Mr. Dunn of the White Company, who called upon him in connection with this matter; there was a number of conferences held in Admiral Gregory's office with Mr. Dunn, who, Admiral

(Testimony of Luther E. Gregory.)

Gregory thought, was acting as the agent of the Pan American Company and as a prospective bidder, and who came to secure information, as is customary with anyone who proposes to bid upon any Naval work; and the principal things discussed were the nature of the soil, the conditions and methods of handling material, the labor market, and all questions of that general nature which have to do with construction work. Witness does not recall whether Mr. Dunn made any statement about any necessity for having specifications prepared in detail and the plans brought down to a basis where a lump sum bid would be possible; he would have considered that necessary whether Mr. Dunn mentioned it or not; he knew it was necessary to do that in order that anyone could make an intelligent bid. The plans and specifications sent to prospective bidders by the Interior Department under cover of letter dated March 7, 1922 (Ex. No. 91), bear date March 1st, and were prepared in the Bureau of Yards and Docks for the purpose of enabling competitors to figure on a lump sum bid basis; they were the second set of plans prepared; the first, prepared in December, were found to be so general and to convey so little information of a kind that would be required to submit an intelligent bid, that the Bureau prepared this second set subsequent to the receipt of information from the Pearl Harbor Naval Station as to local conditions; the second set was therefore complete, to the Bureau's satisfaction, at least to the extent that it

(Testimony of Luther E. Gregory.)

would be possible for anyone to render a very much better bid, a closer bid.

Lieutenant Keating, an officer of the Navy, was ordered to [320—242] the Bureau at the request of the witness, while the second set of plans was being prepared, he had been on duty prior to that time at Hampton Roads Naval Base, and he was selected to come to the Bureau during the course of the preparation of the plans preparatory to his detail to the Pearl Harbor Naval Station, where it was contemplated that he would be in immediate charge of the construction work. By direction of the witness, Lieutenant Keating acted during the period when the plans were being prepared and the time when the contract was being negotiated, as liaison officer between the Bureau of Yards and Docks and the Bureau of Mines. Prior to the receipt of bids, on April 15, 1922, Admiral Gregory had given instructions to Lieutenant Keating to prepare an estimate of the cost of the project on the basis of the plans and specifications which the Bureau had prepared; when the bids were opened, it was found that the lowest bid actually submitted was in the neighborhood of \$31,000 more than the estimate thus previously prepared by Lieutenant Keating; in other words, it was within one per cent of the estimate which the bureau had previously prepared.

Direct Examination.

On direct examination, Admiral Gregory stated the number of tanks covered by the first contract; the second contract called for 17 tanks for fuel oil,

(Testimony of Luther E. Gregory.)

with a capacity of 150,000 barrels each, and one with a capacity of 80,000 barrels. The purpose of that was to secure the total amount of storage which was requested by the General Board; there was also required to be furnished 9 tanks for gasoline storage, of 225,000 gallons each, 56 tanks for storing lubricating oil, of 25,000 gallons each, and all the equipment and facilities which would go with that, such as the fire apparatus, earth embankments, foundations, lubricating oil building, pump-houses, etc.

Admiral Gregory does not know how the quantity which the General Board decided it should have storage facilities for had [321—243] been arrived at; the General Board had adopted a program for storage at all the different stations, and that was reported to the Secretary of the Navy, who approved the report, and the Bureau was given instructions to prepare plans to provide that amount of storage, and undertook to design a plan for a fuel station for the quantity which the General Board had indicated it desired to obtain, and which the Secretary of the Navy had approved.

The 150,000-barrel tanks of special design were to provide the quantity of storage required in the area that was available to the Department, and were planned by a force of engineers and draftsmen in the Bureau, under the direction of the witness; they are not what are commonly known as commercial oil tanks, but are of a special design; that is also true of the tanks provided for in the contract of April 25, 1922; all of the principal features of the station, in addition to the tanks, such as pipe-lines,

(Testimony of Luther E. Gregory.)

the fuel station dock, and all the incidentals that went to make up this fuel base at Pearl Harbor, were specially designed and prepared in the Bureau. The barracks buildings are for men who operate the pumps, serve as watchmen, manipulate the valves, and have other duties in connection with the care and operation of the oil storage plant. They were planned for nothing else; just precisely as it would be necessary out at Elk Hills for the development of the Naval oil fields.

There is an old coaling base at Pearl Harbor, but the modern policy has been that all new ships built for the Navy are oil burning, the Navy is getting on an oil fuel basis rather than on a coal fuel basis, and in connection with this, the Navy Department has been gradually developing oil storage stations to supplement now, and ultimately to supplant, the coal stations. [322—244]

As regards the policy of the Navy Department with respect to the secret or public character of the matters embraced in the contracts in this case, the correspondence which came to the desk of the witness relative to the plans at Pearl Harbor were all marked "Secret," because they were a portion of the War Plans. It is the experience to have almost daily coming over important desks in the Department letters of that nature, and it is invariably the custom that such papers are passed only from one commissioned officer to another, and seldom are the contents made known even to civilian employees, except those of the most trusted character, and who

(Testimony of Luther E. Gregory.)

have to do with technical questions. Questions of that nature are not discussed with anybody outside of the service. The plans pertaining to this work witness does not think were so marked when they passed this Bureau, but they were given only to whose who it was necessary to consult, and requests were made that the plans be not passed around any more than necessary to secure the desired result. The witness recalls having impressed upon Mr. Dunn, of the White Company, the secret character of those plans and the necessity of having them handled in the most confidential way; he told Dunn they were part of the War Plans, and the understanding was that no unnecessary divulging of them would be considered.

As regards the question of additional land for the fuel station, there was a question of utilizing for this fuel station lands which theretofore had been put aside—on paper, at least—for the Marine Corps uses; that did not involve any trading of lands, it simply involved the subsequent use by the Navy Department of lands which it had theretofore intended to put to another use.

A. H. Robertson, who signed as Acting Chief of Operations some correspondence in April, 1923, on the subject of the lease or purchase by the contractor of lands not then within the [323—245] station, is Rear Admiral Robertson, then assistant to Admiral Coontz, the Chief of Navy Operations. Where it is indicated that the correspondence came from or was sent to "Operations," that means to the office

(Testimony of Luther E. Gregory.)

of the Chief of Navy Operations; preparation in that connection for the signature of the Secretary of the Navy by the Bureau of Yards and Docks of a letter referred to, and memorandum relating thereto, occurred after conference between the office of the Chief of Operations and the witness as Chief of the Bureau of Yards and Docks. No one connected with the Pan American Company was consulted or communicated with on that subject at all. It was purely a matter that arose at the station, and was disposed of in the Department. Upon being asked for his opinion as to the value of the construction work done at Pearl Harbor under the contracts in issue, the witness answered that it was almost impossible to give an exact opinion; he would further state that: "That if you look at the cost of the work to be in accordance with the original bid price, which was in the neighborhood of \$3,200,000, if you bear in mind that the savings were to accrue to the Government, it would mean that we then are eliminating what ordinarily would have been profit had an ordinary contractor bid upon this work. We feel, therefore, that the value to the Government is worth fully what the lump-sum bid price was, although we expect to gain a saving of something between \$300,000 and \$400,000. The exact figures are not yet available by reason of certain minor claims that are still in process of adjustment. In regard to the second contract, we are confident that we are getting full value for all of the price that is to come to us by reason of the fact that we

(Testimony of Luther E. Gregory.)

get it at cost and that we have insured competition on each and every part of the specific work which has been subcontracted to special bidders." As these contracts have actually been operated, neither one allowed a profit to the principal contractor, [324—246] the Pan American Company; ordinarily, on contracts of a similar character, contractors bid to make about 10 per cent on their cost.

Admiral Gregory thinks it would be a very fair assumption to make that the United States has received at least \$1.10 for every \$1.00 it expended on this Pearl Harbor work. The work has been done in accordance with the plans and specifications that were furnished, and the Bureau has had detailed to the Naval Station at least one officer of the Corps of Civil Engineers, Lieutenant Keating, who has been mentioned heretofore, to see that the work is done in accordance with those plans and specifications; he has been assisted by inspectors to see that the work is so done; in the event any additional assistance has been required in the way of yard facilities, or in the preparation of additional plans, the regular yard departments of the naval stations have been called upon, even from the Commandant down, to assist and see that the work was done in the proper way. The methods that have been followed in the Department in itself are quite similar to those that prevail for all other contract work; so that in all of the essential stages, certainly as regards construction and inspection, it is in accordance with the Navy Department's usual custom.

(Testimony of Luther E. Gregory.)

This has been done exclusively under the Bureau of Yards and Docks, and the local naval establishment at Pearl Harbor. No officer or employee of the Interior Department, as distinguished from officers and employees of the Navy Department, have had anything to do with supervising or inspecting this work. Lieutenant Keating routes his reports to the witness through the Commandant, who is a naval officer, and by regulations the representative of all the Bureaus.

Shortly after this work was placed under the Bureau of Yards and Docks, it advised the Commandant that he would be [325—247] the representative of the Bureau, just the same as he is in all routine matters. The Commandant, who was in command when the work was started, was Rear Admiral Simpson, who reached a retiring age during the period of this work, and who was succeeded by Admiral John D. McDonald, who is the present Commandant of the Navy Yard and District. Also there has been a change in the office of Public Works Officer; the one who was in charge when the work began was Commandant Carlson, who reached the end of a regular or normal tour of duty, and was relieved by Commander Brownell, who is there at the present. The Public Works Officer is in direct touch with the work. Lieutenant Keating has not been transferred from the start, he was there at the beginning of the work, and he is still director of all of the work at that place. From time to time, as this work progresses, it is very frequently necessary

(Testimony of Luther E. Gregory.)

for detailed drawings to be submitted for approval before the work can actually go on. These drawings are submitted by the contractor to the Bureau of Yards and Docks, where they are examined by the technical force handling that particular class of work, the same as they would drawings from any other contractor for similar work.

The dock and dredging referred to in the direct examination does not represent work separate and apart from the putting in of the complete fuel reserve storage station, but constitutes a part of the completion and utilization by the Navy of a complete fuel oil storage reserve station. It is not only an integral part of the fuel oil storage plant, but it is also specifically separate from the industrial portion of the yard; the map in evidence (Exhibit 131) shows this by indicating a separation of the reserve oil storage plant from the other portions of the naval station. What the witness has said about the dock and channel and other incidental facilities at Merry Point is also true with respect to the gasoline fuel station at Ford Island; [326—248] the reason for the location of gasoline storage at Ford Island is twofold; in the first place, it is desirable to have the gasoline storage somewhat isolated from the fuel oil storage; secondly, as nearly all the gasoline will be used by airplanes, it was considered desirable and necessary to have that storage right on the area which was devoted to the flying field. Ford Island is a separate island, and

(Testimony of Luther E. Gregory.)

is used jointly by the Army and the Navy as a flying field. This storage plant is for naval aviation use.

The Pearl Harbor plant, considered as a whole, provides storage for fuel oil, which is the greatest bulk of the Navy storage; for Diesel oil; for gasoline; and for a great many different grades of machinery and lubricating oil. Those are the four classes for which the Navy requires storage. Diesel oil is used for internal combustion engines; lubricating oil for the Navy must be kept in a great many different grades; at this place, the Navy has oil of different kinds for every sort of naval craft, —on the water, under the water, and in the air.

As regards whether in making contracts for war plans facilities, such as this, it is usual to make plans public by newspaper advertisement or circulars, "It is certainly not common to advertise our war plans. We do not do that."

As to whether there is any custom in connection with the making of supplemental contracts, when it becomes necessary in the prosecution of any piece of work to make any changes, whether in the way of additions, deductions, omissions, or even a change in principle, it is customary by supplemental agreement to carry out those changes, in order that the plans of the Department may be met.

The Bureau commenced work on the plans which are embraced in the supplemental contract of December 11, 1922, in October or November, 1922, the witness thinks; it was in the latter part of the summer, at least. This work was commenced as a

(Testimony of Luther E. Gregory.)

result of [327—249] orders received from the Secretary of Navy; the December 11 contract is called a cost contract, because that was the offer made by the Pan American Company, that it would effect this increased work on cost, without any profit whatever. As to why detailed plans and specifications were not made a part of the December 11 contract, and the exact sort of the work therein contracted for is not set forth, it is because of this: There had not been time to work out the full plans, and knowing that the work was to be sublet to different builders, for example, the steel tanks would be sublet to tank builders, the electric work to electric contractors, the piping to a piping contractor, etc., until the Bureau had sufficient time to prepare the detailed plans, "We considered that our interests were fully protected by simply effecting that agreement and stating that detail plans would be furnished to the contractor as soon as they were completed by the Bureau." That was subsequently done; in substance, that provided that the contractor obligated itself at cost to do the work as the Bureau of Yards and Docks thereafter planned and directed.

As to the practice that is followed with respect to the obtaining of competitive bids, and the right of subcontractors under the December 11 contract, the J. G. White Company, as agent of the Pan American Company, was instructed by the witness to obtain bids on the different portions of this work, and submit those bids to the Bureau for its action;

(Testimony of Luther E. Gregory.)

that plan was carried out; bids were obtained on the different parts of the work up to approximately 90 per cent of the aggregate value of the entire work, and a very lively competition was insured by asking enough people to bid to see that there was good competition, and awards were made to the low bidder in each and every case; the Bureau of Yards and Docks directed the White Company as to whom the subcontracts were to be made with. [328—250]

Prior to the receipt of bids for what became the April 25, 1922, contract, witness caused to be furnished to Dr. Bain for transmission to prospective bidders lists of companies and persons who might be considered as subcontractors. The work under this contract is entirely completed, and was accepted as of date December 15, 1922; that tankage has all been filled with oil. This was a completed project December 15, 1922.

With respect to the second contract, the work is nearing completion at the present time, and probably will be entirely completed by the end of the calendar year 1924, "over 90 per cent is now complete."

Under both contracts, the work progressed in a very satisfactory manner as to time and as to quality. Admiral Gregory thinks that the Pearl Harbor fuel base is the best the United States has in the entire service, and he does not know of any better in the world.

The memorandum enclosed with letter from Dr. Bain to Mr. Dunn, dated April 28, 1922 (hereafter referred to in this statement of the evidence

(Testimony of Luther E. Gregory.)

as Exhibit —), is in accordance with the discussion the witness had with Dr. Bain relative to the control of the work. The draft or plan of the contract, which bears date April 25, was before the Bureau, and being considered by it before the contract was actually signed up, as indicated by the date of the memorandum referred to, April 22.

Admiral Gregory has not the exact amount saved in the cost of the work under the April 25 contract, but it will be somewhere between \$300,000 and \$400,000 less than was anticipated, less than the lump sum price; in other words, that represents the saving that will come to the Government on that first contract. The plan of the first contract was that the contractor was under obligations to do the work at an amount not in excess of the lump sum stipulated in the contract, and stated therein in barrels of oil; if the work cost more than estimated, that [329—251] was to be borne by the contractor; if the work cost less, the Government was to get the benefit of it.

Redirect Examination.

On redirect examination Admiral Gregory testified that when he referred to the naval station at Pearl Harbor, he referred to the whole navy yard there, which is within the 14th Naval District; the project covered by the two contracts referred to in the testimony as naval fuel stations are what in the Department are called depots for coal, or depots for other fuel; that is the way they are designated in the naval appropriation acts. As to whether

(Testimony of Luther E. Gregory.)

they are really fuel depots, it is a part of the station work.

The witness identified the Bureau's plans for the work under contract 4650 (April 25, 1922) and contract 4800 (December 11, 1922), which consisted of two large bundles of blue-prints, and the same were marked in evidence as Plaintiff's Exhibits 136 and 137, but were not exhibited to the Court or used upon the trial. Exhibit 138 is a blue-print of location plan and profile under contract No. 4650; Exhibit No. 139 is a blue-print of plan for oil line and oil and water-piping for the tankage under contract 4800, all being marked in evidence, but as they were not used upon the trial below, the exhibits referred to in this paragraph are not included in this statement of the evidence.

As to the testimony of Admiral Gregory on cross-examination to the effect that the Navy did not advertise the war plans, advertisements are made for bids as a rule for those things for which the Department wishes to secure offers, simply making public sufficient information to get a satisfactory bid; in other words, a thing that is in the war plans may or may not come to fruition at a particular moment, and if it is decided that a particular project is to be started, for instance, if Congress appropriates for it, then the Department starts to [330—252] advertise for bids.

The ground at Pearl Harbor where this fuel plant is located, is far from flat; the highest tanks are located on a hill in the neighborhood of 50 or 60 feet

(Testimony of Luther E. Gregory.)

above the tide level; they can be seen from the inside of Pearl Harbor, but they cannot be seen from the ocean, because they are 6 or 7 miles inland, with very much higher ground, perhaps 700 feet, intervening between this location and the open sea; there is nothing to prevent them from being seen by an airplane going over the property; there is privately owned land all around the naval station in nearly all directions. The fact that naval reserve No. 1 has been leased to the Pan American Company at certain stated royalties is not a part of the war plans. The lease of December 11, 1922, was separate from the contract of that date; there is nothing in the war plans that required any secrecy about that lease so far as witness knew; he has no knowledge regarding any profit made by the contractor as a result of the selling or using of the oil; his testimony about the questions of profit is intended to apply to all of the construction work which came under his observation; he has no knowledge as regards whether the contract would be profitable in taking the oil and refining or selling it, or as to how desirable it might be to any oil company to get that quantity of royalty oil; this statement applies to both contracts. He presumes that all of the subcontracts involved a profit to the subcontractors, and he assumes that would be the ordinary contractor's profit; both contracts involved a substantial engineering fee to the White Company for getting subcontracts and supervising them. Under the first contract, the engineering fee to the White Corporation was a fixed sum,

(Testimony of Luther E. Gregory.)

which approximated 5 per cent, and under the second contract, it was definitely fixed at 5 per cent. [331—253]

Regarding his testimony as to conversations with Mr. Dunn, and perhaps others, about the conditions at Pearl Harbor that a bidder might desire to know, witness thinks some of the prospective tank bidders consulted the Bureau; they came informally; there was no written correspondence; he does not recall who they were, but the Bureau had some inquiries from tank builders; those were intending subcontractors under the Pan American, or whoever would bid, unless they decided that they could do the whole job in order to get the tanks, but they were primarily tank builders.

The Bureau was not able to have the plans and specifications in such shape when the second contract was made that they could be bid upon until some time thereafter, that is, as to the final complete plans; they were just general plans at that time; the making of the final plans strung along, the Bureau would take up one part of the work at a time, and as it finished that part, the plans would be issued to the White Company to go ahead with that portion of the work; then another portion would come afterwards; asked whether there was any reason, so far as his Department was concerned, why the contract could not have waited until he had the complete plans for the project, the witness answered, "Except that they were in position to go ahead with some of the work, and we had the plans

(Testimony of Luther E. Gregory.)

prepared in the order in which the work would be required to be let, to save time."

Under the second contract, a subcontract for the construction of the wharf for the gasoline plant on Ford Island was made with the Hawaiian Dredging Company in April, 1922. The price being \$98,676, and subcontract was made with the same concern for dredging, November 15, 1923, for \$54,000. The fencing subcontract, under the second contract, was let [332—254] December 17, 1923, to the Paige Steel & Wire Company, for \$93,124.

Recross-examination.

On recross-examination, Admiral Gregory testified that he has not with him the Bureau records showing exactly the extent to which the work under contract 4800 (December 11, 1922) had progressed; that it would involve delay to obtain them from Washington, but that Mr. Dunn and Mr. Kennedy of the White Company, who are in the courtroom, have with them data which will enable them to report definitely, and in such a way as to give the correct division; he is familiar with the progress both from the report of the White Company, and as Chief of the Bureau of Yards and Docks, and accepts them as being accurate.

As to the few subcontracts he was interrogated about on redirect, the witness says that a subcontract for fencing around the work would undoubtedly be one of the last things to be installed, there was no delay in getting the work under way after

(Testimony of Luther E. Gregory.)

the making of the contract of December 11, and it is customary for general contractors to make these subcontracts as the work progresses, and there is nothing unusual at all about the fact that on a job that takes a year or two to complete, some subcontracts are made as late in point of time as those referred to in this case.

The benefit of the saving of between three and four hundred thousand dollars, as witness approximated, about which he has spoken, was a saving of which the Government got the benefit after the White Company's engineering fee was charged to the cost of the work.

The plan to enlarge the Navy's fuel oil storage plant facilities, by whatever name called, after the April 25 contract had been made, was brought about as a result of a decision of the General Board, approved by the Secretary of the Navy, which [333—255] in turn resulted in directions to the Bureau of Yards and Docks, to proceed to plan this second project; as at that time there was under way the first project, from an engineering construction standpoint, it would not be a satisfactory or practical way of carrying forward the work, to have the second project taken up by an independent or new contracting firm, because the extended work is really to be so integrally connected with the original work, by reason of the piping, the electrical connections, the fire-fighting connections, and all that, as to make a separate contract with a separate party to involve, undoubt-

(Testimony of Luther E. Gregory.)

edly, a great deal of expense, and it would not be considered a practical way of going at it. The only logical way is to make it an extension of the first contract.

Redirect Examination.

On redirect examination the witness was asked whether it is not a fact that his Bureau never had the subcontracts under contract 4650 (April 25) at all, because it was a lump sum contract, and if it is not a fact that the Bureau could not get that, even Government counsel, except by communicating with the White Company. He answered that he was not sure that the Bureau had a copy of the contract, but "we were consulted on the bids, which is the essential part of it."

The examination of Admiral Gregory having been concluded, and he having been excused from the stand, there was offered and received in evidence a letter dated July 28, 1922, from J. J. Cotter, of the Pan American Petroleum Company, to the Secretary of the Interior, reading as follows:

U. S. EXHIBIT No. 140.

The Honorable,

The Secretary of the Interior,
Washington, D. C.

Dear Sir:—

There have been two reductions made in the published price of petroleum in California in the last two weeks at [334—256] twenty-five (25¢) cents

per barrel each. Oil which sold for \$1.10 now brings sixty (60¢) cents. Higher gravity oil has been likewise reduced.

We are seriously contemplating the adoption of a plan which should bring better prices for this oil, if and when the plan can be consummated. In order that this plan may be developed, it is essential that we should have immediately your consent for suspension of operations, both drilling and pumping, on lands which we have leased from both within and without the Naval Reserves. This suspension of operations may be made to such an extent as not to include offset wells, but license to make it complete is necessary in order that development of the contemplated plan may be attempted.

Reductions in the published prices became necessary because of the phenomenal, and we believe, temporary production of two newly discovered pools in southern Los Angeles county. We believe that when flush production of these pools is exhausted, that the over-supply will disappear, but in the meantime the flush production of the Naval Reserves will have been disposed of at present low prices at a great loss to the Government and to the lessees.

Inasmuch as all the Government royalty oil applied to the payment of work being done at Pearl Harbor is at published prices, the number of barrels required to satisfy payment under that contract has been greatly increased by the reduction in published prices. The Government is the

sufferer to a great extent in connection with this work while the contracting company merely has time of repayment of its expenditures delayed or postponed. We believe that if this oil can be safely stored underground, that better prices which the future should develop will result and bring out the liquidation of contract prices in approximately the same length of time with [335—257] a much smaller quantity of oil.

We hope that you will see your way clear to authorize us to suspend operations both of drilling or production, or either, to such extent as we may find it necessary in connection with the study of our proposed plan, until such time as said plan can be fully developed and submitted to you for your study and approval. We hope to be able to submit this plan within ninety days.

To enable us to commence the initiation of the plan which we have in mind and to avoid the menace of possible failure to fulfill our leases, specific telegraphic authority to discontinue operations, following by a mail confirmation, is hereby earnestly requested.

Respectfully,
PAN AMERICAN PETROLEUM COMPANY.

By J. J. COTTER.

Plaintiff next offered in evidence night letter telegram, dated July 28, 1922, from Secretary Fall to E. L. Doheny, which is Plaintiff's Exhibit 141, and reads as follows:

U. S. EXHIBIT No. 141.

Colonel E. L. Doheny,
1015 Security Building,
Los Angeles, California.

Your communication through Cotter of this date. Government not only prepared to accede to requests curtailing production and waiving immediate drilling requirements but desirous such policy be followed Naval reserves numbers one and two where results will not be disastrous because of water incursions or immediate danger drainage. Advise you instruct your representative consult immediately Campbell representative Bureau of Mines located Bakersfield who is being authorized by telegraph to carry out this program.

ALBERT B. FALL,
Secretary. [336—258]

Thereupon Plaintiff's Exhibit 142, a letter addressed to E. L. Doheny, at Los Angeles, from Albert B. Fall, was received in evidence, and is as follows:

U. S. EXHIBIT No. 142.

July 28, 1922.

My Dear Colonel:

Confirming my telegram of this date, I am also handing you copy of my telegram of instructions sent to Campbell our representative at Bakersfield.

I presume there is nothing to add to what has been stated in the two telegrams, except that I am in cordial accord with your ideas and with your reasoning.

586 *Pan American Petroleum Company et al.*

You will note that I have made this program general, while leaving it to be decided between the Lessees and Campbell in each specific instance just what course should be followed.

Very sincerely yours,

(Sgd.) ALBERT B. FALL.

Plaintiff's Exhibit 143, offered and admitted, is the telegram referred to in the last quoted letter, and is as follows:

U. S. EXHIBIT No. 143.

July 28, 1922.

Campbell,

Bureau of Mines,

Bakersfield, California.

Have just wired Doheny Los Angeles as follows
Quote Your communication through Cotter of this date. Government not only prepared to accede to requests curtailing production and waiving immediate drilling requirements but desires such policy be followed Naval Reserves numbers one and two where results will not be disastrous because of water incursions or immediate danger drainage. Advise you instruct your [337—259] representative Bureau of Mines located Bakersfield who is being authorized by telegraph to carry out this program end quote. This is your authority act with Doheny's representative as well as any other Government lessees in carrying out this plan. Government anxious reduce production account present prices therefore willing shut off partially or entirely where possible without immediate dan-

ger through incursions water or from drainage.

FALL,
Secretary,

As Plaintiff's Exhibit 144 was then read in evidence the following letter, dated at Washington, September 13, 1922.

PLAINTIFF'S EXHIBIT No. 144.

Mr. Paul Shoup,
The Pacific Oil Company,
Southern Pacific Building,
San Francisco, Calif.

My dear Mr. Shoup:

Your company appreciates fully the overproduction which now exists in California, and I do not wish to take any steps which will aggravate this situation. It is necessary, however, that the Government be protected in every way from drainage from wells producing on lands immediately adjacent to our naval reserves.

My attention has been called to the condition which exists in the heart of Naval Reserve No. 1, in which the Pacific Oil Company produces from wells on Section 31, T. 30 S., R. 24 E., and the Standard Oil Company from wells in Section 36, T. 30 S., R. 23E.

Several of these are line wells and while the drainage will not be appreciable, the Department finds it necessary to consider drilling on the northerly strip of Section 1, T. 31 S., R. 23 E., and a northerly strip of the West 1/2 of Section 6, T. 31

S, R. 24 E., unless offset production is curtailed. [338—260].

This matter has been discussed between your field superintendent and the local engineers of the Bureau of Mines without effecting any agreement. I am wondering whether you can not see your way to shutting down the following wells on Section 3: Wells Nos. 9, 11, 15, 50 and 51. You will find inclosed copy of a letter which I am writing to Mr. Storey, regarding the shutting in of certain of his wells in Section 36. If your company and the Standard Oil Company close in the wells mentioned in these two letters, the Department will not find it necessary to provide for the drilling of wells in Section 1 and Section 6, until your wells and those of the Standard Oil Company are again put to producing.

Respectfully,

(Sgd.) ALBERT B. FALL,
Secretary.

On the same date, Secretary Fall addressed a letter to Mr. H. M. Storey, Standard Oil Company, San Francisco, substantially identical with Exhibit No. 144, transmitting a copy of that exhibit to Mr. Storey, making request as to shutting down 5 wells in Section 36, which letter to Mr. Storey was read in evidence as part of Exhibit 144.

Under date of September 19, Mr. Storey replied to Secretary Fall that his company would be glad to shut down one of the wells as requested, but as the four others were all leased ground, it would be necessary to refer the matter to the lessors, and

that this had been done. Mr. Storey's letter, substantially as here stated, was read as Plaintiff's Exhibit 145.

On October 1st, 1922, Mr. Shoup sent from Los Angeles the following telegram to Secretary Fall, which, as Exhibit 146, was read in evidence:

PLAINTIFF'S EXHIBIT No. 146.

Hon. Albert B. Fall,

Secretary of Interior Washington, D. C.

Your favor of thirteenth ultimo I am complying with as we [339—261] wish to work in perfect harmony with your good self and the department under your direction stop Wells fifteen and fifty-one however are only gas wells and as we have contract with Midway Gas Company under which we are obligated to deliver this gas I am wondering if you would not be willing to have these operate stop What is your suggestion as to them stop We will be out some expense as the shutting in of these oil wells makes operating conditions rather disadvantageous but are nevertheless glad to meet your views which I think in long run mean reciprocal benefit.

PAUL SHOUP.

Plaintiff's No. 147 is dated October 4, 1922, and reads as follows:

U. S. EXHIBIT No. 147.

Memorandum to Secretary Finney:

Secretary Fall, by letter of September 13, suggested the shut-down referred to in Mr. Burke's telegram. The Secretary's object was to avoid

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leasing adjacent strips of Government land during a period of over-production. The Secretary asked no favors from any one and made his suggestion for the good of the Government as well as the operators concerned. Therefore, the Department does not owe any preferential lease in case the suggestion is accepted.

H. FOSTER BAIN.

Plaintiff's Exhibit No. 148 is a telegram, prepared in the Bureau of Mines by F. B. Tough, the then Chief Petroleum Technologist, dated at Washington, D. C., October 4, 1922, and sent to Mr. Paul Shoup, which, as Exhibit 148, was received in evidence, and reads as follows: [340—262]

U. S. EXHIBIT No. 148.

Your wire from Los Angeles first reference to shutting down your wells numbers fifteen and fifty one section thirty one thirty twenty four Elk Hills stop It appears that both these wells are producing gas from the same horizon that furnished the oil in this vicinity and that the oil in these wells is at present held back by the high pressure of gas in the upper part of this horizon stop For these reasons I am inclined to believe that considerable loss of gas which is the motive force causing these wells to flow would be equivalent to actual drainage of oil Moreover since these wells are in the oil bearing horizon it would be virtually impossible for me to lease a tract of land for gas wells only south of your property stop I appreciate your attitude in this matter and

assure you of the department's earnest desire to cooperate in solving the economic as well as producing problems of the petroleum industry.

FALL,
Secretary.

Plaintiff's Exhibit 149 is Mr. Shoup's reply, dated at San Francisco, California, October 5, 1922, reading:

PLAINTIFF'S EXHIBIT No. 149.

Hon. Albert B. Fall,
Secretary of Interior,
Washington, D. C.

Yours of the Fourth in connection with Shutting down wells on certain sections in Elk Hills we will accept your suggestion and shut them all down as named in your letter of the thirteenth assuming of course that Standard Oil Company will do likewise. Kindly advise.

PAUL SHOUP.

Plaintiff's Exhibit No. 150 is a telegram from the Bureau of Mines by H. Foster Bain, Director, dated Washington, D. C., October 6, 1922, addressed to Paul Shoup, at San [341—263] Francisco, and reading as follows:

PLAINTIFF'S EXHIBIT No. 150.

Much appreciate your cooperation. Standard has agreed. Will wire when Carman lessee from Standard signifies approval.

FALL,
Secretary.

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Plaintiff's Exhibit No. 151 is a letter from Mr. Storey to Secretary Fall, dated at San Francisco, October 11, 1922, which is as follows:

PLAINTIFF'S EXHIBIT No. 151.

Hon. Albert B. Fall,
Secretary of the Interior,
Washington, D. C.

Dear Mr. Secretary:—

We sent you the following telegram to-day:

“All of the wells mentioned your letter September thirteenth were shut in to-day.”

We could not give you earlier advice, because our lessors are eastern residents and their permission to shut in the wells in question was not received until yesterday.

Very respectfully yours,

/S./ H. M. STOREY.

Plaintiff's Exhibit No. 152 is a telegram prepared by Mr. Tough of the Bureau of Mines, dated at Washington, October 14, 1922, addressed to Paul Shoup, San Francisco, reading as follows:

PLAINTIFF'S EXHIBIT No. 152.

Referring your wire of the fifth to Secretary of Interior in which you state Quote We will accept your suggestion and shut them all down as named in your letter thirteenth assuming of course that Standard Oil Company will do likewise End quote Advised by wire dated San Francisco eleventh from H. M. Storey Quote All of the wells mentioned your letter September thirteenth were shut down to-

day End quote If you will give appropriate instructions to your field men in this regard [342—264] your cooperation will be appreciated by the Department.

FINNEY,
First Assistant Secretary.

Plaintiff's Exhibit No. 153 is a telegram from Paul Shoup to Assistant Secretary Finney, dated October 16, 1922, stating that "Orders have been given to close down our wells at once."

Plaintiff's Exhibit No. 154 is a letter from H. L. Westerbrook, Treasurer of the Belridge Oil Company, dated at Los Angeles, September 26, 1922, addressed to D. W. Moran, accountant, Department of Interior, Bakersfield, California, and reading as follows:

PLAINTIFF'S EXHIBIT No. 154.

Dear Sir:

We have finished Two Wells on Section 34-30-24, Elk Hills and working on two others which will shortly be finished at which time, we will for the present discontinue drilling, which action on our part, as I understand it, is entirely agreeable to the Department of the Interior, for the reason that our neighbors have discontinued drilling pending a better condition of the oil situation.

Mr. Whittier, our Vice-president, in charge of operations, has left for an extended trip in the East and requested me to secure, upon our completion of the other two wells, making four in all, a formal consent to discontinuance of drilling under present con-

ditions. I am somewhat at a loss to know how to go about securing this formal consent and am calling upon you for assistance. Will you please give me information regarding this matter and if you have a blank form to go by or there is a regulation letter to be written, I will appreciate very much if you will inform me just how to go about this. There is no question but what it will be agreeable to you people for us to suspend drilling for the time being. I understand our [343—265] neighbors have made such a stipulation and it has been granted.

Very truly yours,

H. L. WESTERBROOK,

Treasurer.

The enclosure with the foregoing, which was read in evidence as part of the same exhibit, is a letter from Mr. Lombardi, of the Pacific Oil Company, dated San Francisco, October 2, 1922, to Mr. H. L. Westerbrook, Treasurer of the Belridge Oil Company, Los Angeles, California, and reads as follows:

Dear Sir:

Referring to your letter of September 29th. It is our present intention not to drill on locations 4, 5, 6 and 8 on Section 35, Elk Hills, unless we are forced to do so by drilling across the line.

It is impossible to say when we will find it necessary to drill these wells, but in view of the present oil situation in California I am of the opinion that we will not drill them in the near future.

You are at liberty to show this letter to Mr. Campbell.

Yours truly,
M. E. LOMBARDI.

Plaintiff's Exhibit No. 155 is a letter dated October 21, 1922, from said Westbrook to E. P. Campbell, Deputy Supervisor, Department of the Interior, Bakersfield, California, and reads as follows:

PLAINTIFF'S EXHIBIT No. 155.

Dear Sir:

Kindly refer to your letter of September 28th, addressed to me with relation to a possible suspension of drilling on Belridge Oil Company, Section 34-30-24, Elk Hills, California.

Since receiving your letter I had some further correspondence with Mr. Lombardi, Manager of Development [344-266] of the Pacific Oil Company, 79 New Montgomery Street, San Francisco, California, and I am enclosing herewith copy of this letter of October 2nd in which he states in the last paragraph that I am at liberty to show this letter to you.

Will you kindly authorize the Belridge Oil Company to discontinue drilling or to suspend until such time as the conditions of the oil supply and market are more favorable, with the understanding that we will watch the property very closely and protect our property line at all times regardless of the consent which you are giving to the suspension of drilling; in other words, that it will be incumbent upon us to keep track of what our neighbors are do-

ing, and if necessary to offset a well at any time, we will immediately proceed to drill an offset well wherever it is necessary.

I have to advise that we have brought two wells into production, which upon the latest advice received from the field, were producing from 900 to 1000 barrels per day each, and we expect to bring in two additional wells within the next fifteen days at which time we will furnish you with a detail report of such. These four wells completely offset every well which adjoins us on all three sides exposed at this time.

Thanking you in advance for your kind and early reply, I am

Yours very truly,
H. L. WESTERBROOK,
Treasurer.

Plaintiff's Exhibit 156 is dated at Bakersfield, October 24, 1922, and is as follows:

PLAINTIFF'S EXHIBIT No. 156.

Belridge Oil Co.,
Merritt Bldg.,
Los Angeles, Cal.
Attention Mr. H. L. Westbrook.

Dear Sir:

This will acknowledge receipt of your letter of application of October 21st asking for suspension of drilling on your government lease Visalia 010142, Sec. 54, 30/24.—[345—267]

I hereby grant you permission to suspend drilling operations on the lease mentioned above until

(Testimony of Luther E. Gregory.)

the Department formally requests you to resume any or all operations as required under the lease, unless you should sooner begin on your own initiative. This permission is granted when, and if, the Pacific Oil Company has suspended its operations on wells 4, 5, 6, 6 and 8 in adjoining section 35. If any of these wells should be further drilling to completion this permission does not relieve you from drilling offset wells to any of these Pacific Oil Wells on a well-for-well basis. Your wells 1, 3, 15 and 17 should be produced continually when, and as, the Pacific Oil Company's wells 1, 2, 9 and 11 produce (on a well-for-well basis).

For: DEPARTMENT OF INTERIOR.

By: E. P. C.

E. P. CAMPBELL,

Deputy Supervisor,

U. S. Bureau of Mines.

There was thereupon offered and admitted in evidence as Plaintiff's Exhibit No. 157 a memorandum which it was stipulated was submitted by Mr. E. L. Doheny to representatives of the Navy and the Interior Departments, to Admiral Robison of the Navy, and to Secretary Fall of the Interior, who turned it over to Dr. Bain. This memorandum was without date, and the same was not read in evidence, and is not reproduced here, because it was stipulated that the later memorandum, dated November 6, 1922, and hereinafter reproduced as Exhibit 159, embodies all that is in Exhibit No. 157, and also additional matters.

Thereupon, there was received in evidence as Plaintiff's Exhibit 158 the following letter, addressed to Admiral J. K. Robison, Navy Department, Washington, D. C.: [346—268]

PLAINTIFF'S EXHIBIT No. 158.

"My dear Admiral:

I am enclosing herewith additional memoranda concerning the advantages which are offered to the Government in connection with the acquisition of additional territory for drilling purposes on naval reserve No. 1.

I am taking the liberty of including also a fresh copy of the memoranda which I submitted to the Interior Department.

Hoping that this additional memoranda is of the nature which you require, and assuring you of our desire to aid the Government in every way and to make such changes in the proposition as we are able to at your suggestion, I remain

Yours very sincerely,

E. L. DOHENY."

Thereupon a photostatic copy of the "Additional Memorandum" referred to, and enclosed with the foregoing Exhibit 158, was read in evidence as Plaintiff's Exhibit 159, and the same is as follows:

PLAINTIFF'S EXHIBIT No. 159.

"The situation in California has changed in the last four months to the great disadvantage of the producers and especially of the producers on Government lands, as well as to all lessors of all oil lands.

The discovery of three oil areas in localities where the ownership of lands had already been divided into small holdings has resulted in the very rapid and close drilling of a great many wells in each of those areas. Only the great depth of the wells and the length of time which it takes to drill them has prevented the flooding of the market with oil to an extent that would make it impossible to care for it.

The development of these new oil areas resulted in the lowering of the price of the oil, on the 14th of May, of 50 cents a barrel. This reduction was more or less justified by reason of the fact that this oil increased the surplus which was being produced over the daily capacity of the refineries, thus necessitating the building of storage to accommodate the oil which also itself became an investment, the expense of conserving the oil amounting to approximately the 50 cents reduction in price. A further reduction of 25 cents per barrel was made on July 15, and a still further reduction of 25 cents on July 25, thus reducing the basic price from \$1.60 to 60 cents per barrel.

As a result of this lowering of the basic price, the selling price of the Government royalty from the wells operated by its lessees in California has been reduced approximately \$250,000 per month or approximately \$3,000,000 per annum.

Every lessor and lessee in California not interested in a refinery has suffered a reduction in the selling price of his oil of exactly the same amount per barrel, regardless of the amount of the produc-

tion of each well and the cost per barrel of production.

The situation has naturally resulted in the shutting down of many wells that could not be operated at a profit on the latest base price. It has developed a situation which causes study to those most vitally affected.

The wells in the new oil districts are yielding oil under their maximum pressure and while wells in these districts and the lands are to a considerable extent operated under leases by the refining companies of the State; nevertheless the royalty oil which goes to the lessors, as well as the total production of the companies which [347—269] are not associated with refineries, is sold at this low price, which is lower than the cost of production in some parts of the California fields.

No complaint lies against the purchase of this oil at this low price, providing the public has the benefit of the reduction. This, however, is not the case, as the price of California oil products has not been reduced since May 14.

The logic of the situation in California is that these companies and individuals that have had substantial production before the advent of these new districts, and whose production was handled at a profit by the marketing companies at the prices which formerly obtained, must necessarily see that they without marketing facilities now find themselves competing with the casual producer of oil in the new field from wells yielding under maximum pressure and flush production which it pays the lessor

and operator to sell at the present low market prices.

It suggests that an opportunity exists for the investment by those having experience and confidence in the business in an additional enterprise which will help obviate the present handicap of such producers. It is expected that the present relations between the daily oil production and the capacity of the refineries on the Pacific Coast will continue for a considerable period and that the handicap which the producers operate under can only be relieved by the broadening of the market to an extent that is justified by the present increased production.

The plan which has been considered is as follows:

- First: To immediately construct from two to five million barrels of steel and concrete storage in California adjacent and connected with some deep seaport, possibly both at Los Angeles and San Francisco, and immediately upon the completion of a substantial part of the above storage to commence the taking of oil from the existing supply at such rate as will keep pace with the completion of the storage tanks and reservoirs. This will immediately arrest the downward tendency of prices in oil.
- Second: A refinery shall be immediately started with an initial capacity of 10,000 barrels per day, to be increased to 20,000 barrels per day as the situation justifies. This refinery it is estimated would be

ready for operation in from six to eight months.

Third: Pipe-lines and other transportation facilities for the carriage of oil from the sources of supply to the refinery and storage plant to be provided for as rapidly as possible.

It is estimated that this new venture will necessitate the expenditure of approximately \$10,000,000. It can only be justified if those who undertake to carry it out have confidence in the assurances which the different fields offer of a sufficient supply of oil to keep the refinery operating to capacity.

There are two reliable sources of supply for oil that might be used in connection with such an enterprise to the great advantage of the controllers of these sources. The one is the Government royalty oil from the wells now being operated on the public lands in California and in naval reserves Nos. 1 and 2. This royalty oil is at present devoted to the payment of the cost of construction of a naval base at Pearl Harbor. If a contract could be made for it according to the terms of which this royalty oil could be acquired for a period of 10 [348—269-A] years after the completion of the Pearl Harbor contract, or including the period during which the Pearl Harbor contract is being carried on, it would become a valuable adjunct to the above new enterprise. Not sufficient, however, to justify the investment of the substantial sums which this enterprise necessitates.

The other assurance which would be required in

order to make it possible for the enterprise to be of advantage to the Government is the assurance that certain designated lands situated in naval reserve No. 2 should when leased be leased to the company establishing such an enterprise, the developments of said lands to be done when and as rapidly as required by the Government to protect its lands from depletion by drilling on adjoining territory. The royalty on such lands to be the regulation royalty required by the Government.

The benefit which could be guaranteed to the Government as a result of the aid thus given to the new enterprise would be as follows:

- (a) The Government royalty oil to be transported to the refinery at San Pedro or San Francisco, as the case may be, without charge and the exchange be made at that point on the basis of the value of the oil there, thus giving to the Government for its oil the additional price which results from free transportation to tidewater. This amounts to somewhere from 30 cents to 50 cents per barrel, which compared to the present basic price is a very substantial increase.
- (b) To give the Government free storage for 1,000,000 barrels of fuel oil adjacent to the refinery at tidewater and also to bunker Government ships at cost at the docks of the new enterprise without profit.
- (c) To give the Navy the privilege of purchasing any additional fuel, which it might require above the amount which it would be entitled to

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in exchange for royalty crude, at 10 per cent less than the market price at tidewater, as determined by their current Navy contracts for fuel oil.

- (d) To sell to the Navy the manufactured oil products from the refinery, to wit, gasoline, kerosene, lubricating oils, greases, etc., at 10 per cent below the market prices, as determined by the current Navy contracts for such products.
- (e) To carry, subject to the requirements of the Navy, for a period of 15 years, 3,000,000 barrels of our "Mexpet" fuel oil of the following quality, the specifications being based on tests made from 31 tank steamer cargoes of fuel oil delivered in New York harbor over a period of five months.

Gravity	15.81° Beaume.
Furol Visc., at 122° F.	167.58 sec.
Flash	150° F.

This fuel oil can be carried at such places along the Atlantic seaboard of the United States as may be desired, in view of the location of our storage facilities.

We are increasing our storage at various points, notably Carteret and probably Cristobal.

Attention ought to be called here to the fact that this handling of oil through the pipe-lines free of charge to the Government would undoubtedly result in the enterprise sustaining a loss upon such royalty crude as is only equal in value to the fuel oil which the Government would get in exchange therefor at

tidewater. Much of the crude produced from naval reserve No. 1 is below the gravity where it has any substantial value as a refining material. [349—269-B]

The advantage of the Government sharing in this enterprise is obvious when it is considered that the government is the largest lessor in the State of California and consequently the largest sufferer among the lessors from the fact that it must compete with the casual producer of oil from wells on restricted areas which produce under great pressure substantial quantities of oil at a very low cost. Its position of being able to furnish a foundation for the carrying out of this enterprise enables it to participate in the advantages thereof in a very substantial way. The initiation of this enterprise would guarantee against any further cut. The development of it will guarantee substantial increases. The contract under which it would operate guarantees an additional value to the Government oil of at least not less than 30 cents to 50 cents per barrel. The Government's benefits from its present royalty of wells in existence is substantial and its exchange price is based upon the market price of oil which may at any moment be lessened arbitrarily by the marketing companies in California. The new enterprise is one that not only offers a good business reason for its inauguration according to the plan suggested, but it offers this additional reason, which must have a bearing upon the consideration of the subject, that the present low prices of oil have not resulted in any decrease in

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price of petroleum products to the consumers and consequently the proposed effort to stabilize the prices and give a larger participation to the Government will not affect adversely those toward whom the Government holds a parental feeling, the general consuming public.

Prices of crude oil at well:

May 12, 1921, base price of crude at well ..	\$1.60
May 13, 1921, base price of crude at well ..	1.10
July 15, 1922, base price of crude at well ..	.85
July 25, 1922, base price of crude at well ..	.60

Barrels

Daily

Our company's shut-in and producing wells at

Elk Hills—Government leases	16,000
Government royalty on this amount, approximately	5,280

Monthly Annually

On basis sales, 480,000 barrels,		
at \$1.60	\$768,000	\$9,216,000
Present price, 480,000 barrels,		
at 60 cents	288,000	3,456,000
	480,000	5,760,000
Government income, 158,400		
barrels, at \$1.60	253,440	3,041,280
Government present income,		
158,400 barrels at 60 cents ..	95,040	1,140,480
..	158,400	1,900,800
Approximate royalty to Government		
when all wells operating per cent		31-33

August sales, 363,914 barrels	\$309,410.00
August royalty, 110,652 barrels	93,385.00
August royalty on basis 121½ per cent, 45,489 barrels	38,676.00
Difference royalty on basis 121½ per cent, 65,163 barrels	54,709.00
Naval reserve No. 1 consists of 50 sections (2 sec- tions leased). [350—269-C]	

Standard Oil Co. has been draining gas from sections 35, 30, and we since October 14, 1919. This well came in and caught fire. Estimated amount of gas, 190,000,000 cubic feet per day. Probable value of gas sold and used from this well, \$1,000,000. Location of well on section 36, 30, and 23 about 750 feet from east line of section 35. Depth of well 2,141 feet. No oil, dry gas sand. Oil formation over 300 feet below this sand. Dry gas can be produced on section 35 without going into the oil formation. Standard Oil Co. producing oil in next location about 660 feet northerly from this gas well, from oil formation 2,486 to 2,567 feet. A portion of section 35 should be drilled immediately and possibly a small portion of section 26 for the protection of Government lands." [351—269-D]

Appended to the foregoing memorandum, and received in evidence as a part of the same exhibit, were 7 typewritten pages, marked, in their order, in lead pencil, 1st, 2d, 3d, 4th, 5th, 6th, 7th, the last having in pencil on it the words "No pipe-line"; each of these pages listed a certain number of sections in Reserve No. 1, ranging from a minimum of 4 sections to a maximum of 19 sections, represent-

ing different ideas as to the number of sections to be leased in the event of action by the Government on the propositions contained in the foregoing November 6th memorandum, the 7th page listed 4 sections, and the words "No pipe-line" indicated that if that number of sections only were leased, the lessee would not undertake the construction of the pipe-line referred to in the memorandum; the handwriting on the sheets referred to is that of J. C. Anderson, President of defendant, Pan American Petroleum Company.

Plaintiff's Exhibits Nos. 160, 161 and 162, consisted of written letters, dated October 24, November 15, November 16, respectively, from Admiral Gregory, as Chief of the Bureau of Yards and Docks, to the Secretary of the Navy, on the subject of relocating tanks at Pearl Harbor, by utilizing land theretofore intended for Marine Corps purposes, all in substance as testified to by Admiral Gregory; and as the said exhibits do not add to or change the testimony as orally given by the witness Gregory, their inclusion in full in this statement is not material, and is therefore omitted.

Plaintiff's Exhibit No. 163 was received in evidence, dated November 21, 1922, and reads as follows:

PLAINTIFF'S EXHIBIT No. 163.

From: Secretary of the Navy.

To: Board for the Development of Navy Yard Plans.

Via: (1) Chief of Bureau of Yards and Docks.

(2) Major General Commandant, U. S. Marine Corps.

SUBJECT: Fuel Oil Storage, Naval Station, Pearl Harbor, Contract No. 4650.

Reference: (a) Report of Board for the Development of Navy Yard Plans, Nov. 3, 1920. [352—270]

Enclosures:

- (A) Station telegram 8013—1625, October.
- (B) Station telegram 8021—1130, October.
- (C) Station telegram 8017—1632, October.
- (D) Commanding Officer's, Pearl Harbor, Marin Corps Detachment, telegram to Headquarters U. S. Marine Corps, 8518—1420, October.
- (E) Bureau drawing No. 97496.
- (F) Memo. of Chief of Bureau of Yards & Docks, dated 15 Nov. 1922, presenting additional facts relative to request for assignment of space for fuel oil tankage.
- (G) Memo. of Chief of Bureau of Yards & Docks dated 16 Nov. 1922 supplementing information contained in Enclosure (F).

1. The Department has today approved a change in the amount of reserve of fuel oil to be provided at Pearl Harbor from 250,000 tons to 625,000 tons. In order to secure storage space for 625,000 tons of fuel oil at Pearl Harbor it will not only be necessary to utilize all the land east of the existing concrete fuel oil reservoir near Merry Point and the

Submarine Base on Quarry Point to the boundaries of the Naval Station but also to locate the 8 tanks mentioned in the basic correspondence hereunder upon a portion of the Marine Corps reservation. The removal of Halawa Street to the eastward approximately 500 feet as shown on accompanying drawing A—83 of the U. S. Naval Station Pearl Harbor T. H. and the consequent reduction of the size of the Marine reservation is therefore directed.

2. As this change involves modification in the approved development plan of the Naval Station, Pearl Harbor, it is directed that the Board for the Development of Navy Yard Plans prepare, for the consideration of the Department, a new plan showing the locations of the tanks necessary to accommodate such portion of the 625,000 tons of fuel oil as can be accommodated on the land under the control of the Navy Department at Pearl Harbor, and also showing such other changes in the existing approved plan as may be necessitated by this increase in the fuel oil reserve.

3. Please return papers.

(Sgd.) EDWIN DENBY. [353—271]

Plaintiff's Exhibit No. 164 was next introduced and read in evidence, and the same is as follows:

PLAINTIFF'S EXHIBIT No. 164.

20 Nov. 1922.

From: Chief of Bureau of Engineering.

To: Secretary of the Navy.

Via: Chief of Naval Operations.

SUBJECT: Storage of Reserve Fuel Oil.

1. The storage for 1,500,000 barrels of fuel oil at Pearl Harbor under contract with the Pan American Petroleum and Transport Company is nearing completion and it is desirable at this time that information be at hand as to what further disposition should be made of the royalty oil accruing from Naval Petroleum Reserves Nos. 1 and 2.

2. Instructions are requested as to the quantity and location of reserve storage facilities to be provided on the West Coast of the United States (including the Hawaiian Islands).

J. K. ROBISON.

Upon this last quoted exhibit, there was placed an endorsement, signed by Admiral A. H. Robertson, heretofore identified in the testimony of the witness Gregory as a Rear Admiral of the Navy, at the time Assistant to Admiral Koontz, who was then Chief of Naval Operations, which endorsement bears the date of December 15, 1922, and, together with the notation of approval thereof by Acting Secretary of the Navy Roosevelt, was read in evidence as part of the foregoing Plaintiff's Exhibit No. 164. Said endorsement and notation of approval are as follows:

“From: Chief of Naval Operations.

To: Secretary of the Navy.

SUBJECT: Storage facilities for reserves of petroleum products at Naval Operating Base, Pearl Harbor, Hawaii.

1. It is recommended that the next project, to be undertaken in disposing of the royalty oil accruing from Naval [354—272] Petroleum Reserves No. 1 and 2 be increasing the totals of the reserves of all petroleum products at Pearl Harbor to the following figures:

Fuel oil	625,000 tons
Lubricating oil	3,200 tons
Diesel oil	10,000 tons
Submarine lubricating oil	1,200 tons
Aviation oil	300 tons
Aviation gasoline	3,000 tons
Gasoline	3,500 tons

2. The Chief of Yards and Docks has reported that by further developing Merry Point and by utilizing the tract of land between Avenue D and Avenue E and between Central Avenue and South Avenue the desired amounts of storage can be secured.

3. Further recommendation will be made with regard to reserves to be provided on the West Coast of the United States.

A. H. ROBERTSON, Acting.

Copy to Bureau of Yards and Docks.

Bureau of Supplies and Accounts.

Bureau of Engineering.

Navy Department.

Approved Dec. 15, 1922.

T. ROOSEVELT,

Acting Secretary of the Navy.

On December 18, 1922, a further endorsement was placed upon the same paper (Exhibit No. 164), which, as a part of the same exhibit, was received in evidence and reads as follows:

From: Chief of Naval Operations.

To: Chief of Bureau of Supplies and Accounts.

Via: (1) Chief of Bureau of Engineering.

(2) Chief of Bureau of Yards and Docks.

SUBJECT: Storage facilities for reserves of petroleum products at Naval Operating Base, Pearl Harbor, Hawaii.

1. Forwarded, inviting attention to Departmental approval dated 15 December 1922, of the recommendations contained in the 1st endorsement hereunder.

2. Please return papers promptly.

A. H. ROBERTSON,

Acting." [355—273]

Under date of December 19, 1922, Admiral J. K. Robison, Chief of the Bureau of Engineering, forwarded the foregoing exhibit, with the endorsement thereon, with the comment "Contents noted"; this was followed by a like comment signed, on Decem-

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ber 22, by Admiral Whitehorne, Acting Chief of the Bureau of Yards and Docks; on December 26, by Admiral David Potter, Chief of the Bureau of Supplies and Accounts.

It was stipulated between counsel for plaintiff and for defendant that these endorsements were part of the method of the Navy Department at Washington by which official papers were sent around to the officers of various Bureaus concerned with the subject matter, the endorsements being used by forwarding officers to convey their comments.

Plaintiff thereupon offered in evidence as Exhibit 165, letter dated November 22, 1922, from Admiral Robison, Chief of the Bureau of Engineering, to the Bureau of Yards and Docks, which, together with the postscript following the signature, reads as follows:

PLAINTIFF'S EXHIBIT No. 165.

SECRET

14956-162-1-2-F.

22 November, 1922.

To: Bureau of Yards and Docks.

SUBJECT: Reserve storage facilities for petroleum products,—Naval Station, Pearl Harbor.

1. The Bureau of Engineering has recently been informed that the approved War Plans provide for the following storage facilities for petroleum products in the Hawaiian Islands:

Fuel oil	625,000 tons
Lubricating oil	3,200 tons
Diesel oil	10,000 tons
Submarine lubricating oil	1,200 tons
Aviation oil	300 tons
Aviation gasoline	3,000 tons
Gasoline	3,500 tons

2. It is requested that the Bureau of Engineering be informed whether or not these storage facilities can be provided within the limits of the Naval Station at Pearl [356—274] Harbor. It is also requested that, if there be available space for these storage facilities, the Bureau of Yards and Docks proceed with the preparation of the necessary plans therefor.

J. K. ROBISON.

Present storage fuel . . 426,000 bbls.

Pan Amer. Contract 1,500,000 bbls.

1,926,000 bbls. + 275,000 tons
Final 625,000 tons

To be provided 350,000 tons
2,450,000 bbls.

Plaintiff next offered in evidence as Exhibit No. 166, letter from the Secretary of Navy to the Secretary of the Interior, dated November 29, 1922, reading as follows:

PLAINTIFF'S EXHIBIT No. 166.

THE SECRETARY OF THE NAVY.

WASHINGTON.

29 November, 1922.

My Dear Mr. Secretary:

The Navy's needs for storage of fuel oil and other petroleum products at Pearl Harbor, Territory of Hawaii, involve a considerable extension of filled storage beyond that existing or provided for in the contract with the Pan American Petroleum and Transport Company, dated 25 April, 1922. It has been suggested that if the preferential privilege for leasing areas in the naval Petroleum Reserve #2 now possessed by the Pan American Petroleum and Transport Company under the terms of the above-mentioned contract be immediately put into operation over such areas of that reserve as would naturally be opened up at once, and as would not be part of a natural reserve which can be maintained more or less indefinitely,—the Pan American Petroleum and Transport Company would be glad to undertake the construction and filling of the additional storage required at Pearl Harbor.

The Department requires additional facilities at Pearl Harbor as follows: [357—275]

(tons)

Fuel oil	350,000
Lubricating oil	3,200
Diesel oil	10,000

Submarine Lubricating oil	1,200
Aviation oil	300
Aviation gasoline	3,000
Gasoline	3,500

The Department desires, in addition, storage for fuel oil and other petroleum products along the Atlantic and Pacific coasts, as well as at the Panama Canal.

It would be a national advantage to have a considerable commercially owned fuel oil storage at Honolulu.

It has been suggested that the contract with the Pan American Petroleum and Transport Company could be revised so as to provide for free transportation of navy royalty oils from the sources of supply to a refinery at deep water. This free transportation would, of course be a considerable Navy asset. It would further be an asset for the Navy to have stored, for any considerable period, such as fifteen years, any large quantity of privately owned commercial fuel oil—such fuel oil to be subject to the requirements of the Navy.

It appears to this Department that the royalty oil accruing to the Navy from additional leases in Naval Petroleum Reserve #1 should be a sufficiently great proportion to the total production as in itself to justify the granting of the leases.

I have heretofore requested you to act as the Agent of the Navy Department in this matter; and I now make the request that you take steps

to modify the existing contract with the Pan American Petroleum and Transport Company for the production and filling of fuel oil storage at Pearl Harbor (or enter into a new contract, if such be found more desirable) to the end that the above increase in storage be added to the present plans for the Pearl Harbor development, and that as much fuel oil in storage as practicable be ordered for the benefit of the Navy. [358—276]

I have instructed Rear Admiral J. K. Robison, the Engineer-in-Chief of the Navy, to confer with you in this matter, as my direct representative, and shall be pleased either directly, or through him, to furnish you any information or assistance that you may require, and that this Department may be able to give, if you see fit to undertake the accomplishment of this request.

It is requested that the *amounts* of storage projected be treated as confidential.

Very respectfully,

EDWIN DENBY.

The Honorable,
The Secretary of the Interior,
Washington, D. C.

Plaintiff thereupon offered in evidence as Exhibit 167, letter dated December 8, 1922, reading as follows:

PLAINTIFF'S EXHIBIT No. 167.

"The Secretary of the Interior,
Washington, D. C.

Dear Sir:

We have given very careful consideration to the difference between the royalty schedule which the Government has offered us in the lease connected with the proposed modification of our Pearl Harbor contract and the changes in such schedule which we had proposed to request of the Government. Realizing, as we do, that the value of this contract depends largely upon better prevailing prices for crude oils than at present obtains, we have concluded that the possible appreciation in the price may be made to absorb the difference between the schedule of royalties offered and that which we had proposed to request, with the result that we have decided to accept the Government's schedule of royalties as offered.

With appreciations of my highest esteem, I am,
Sincerely yours,

E. L. DOHENY,
President." [359—277]

As Plaintiff's Exhibit 168, there was formally received in evidence contract bearing date December 11, 1922, in words and figures as contained in Exhibit "C" to the Amended Bill of Complaint; and as Plaintiff's Exhibit 169, a lease, December 11, 1922, in words and figures as contained in Exhibit "D" to the Amended Bill of Complaint.

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As Plaintiff's Exhibit 170, there was put in evidence, but not read to court, the specifications for work at Pearl Harbor done under the December 11, 1922, contract, and it is stipulated by the parties hereto that as the contents of these specifications are immaterial to any question presented here, it is not necessary to set them forth in or annex them to this statement of evidence.

Thereupon, as Plaintiff's Exhibit No. 171, the following letter, dated December 29, 1922, with the notations of approval at the foot thereof, was introduced in evidence:

PLAINTIFF'S EXHIBIT No. 171.

"The Secretary of the Interior,
Washington, D. C.

Dear Sir:

Supplementing the contract entered into by the Pan American Petroleum and Transport Company with the United States of America under date of December 11, 1922, in order that the intentions of both parties thereto may be made perfectly clear, we wish to confirm our understanding that it is our mutual purpose and intention that the Government will deliver in exchange, and the Pan American Petroleum and Transport Company will receive the Government's royalty gas and casinghead gasoline to be applied in discharge of the Government's obligations under the original contract dated April 25, 1922 between the United States of America and the Pan American Petroleum and Transport

Company, until the deliveries of such gas and casinghead gasoline, together with deliveries of royalty crude oil heretofore made and hereafter to be made, [360—278] shall be sufficient to satisfy the Government's obligations under said contract of April 25, 1922, and that thereafter such royalty oil, gas and casinghead gasoline shall continue to be delivered by the Government in accordance with said contract of December 11, 1922.

Very truly yours,

JOS. J. COTTER,
Vice-President.

Above sets forth my understanding.

Approved:

ALBERT B. FALL,
Secretary of the Interior.

Approved:

EDWIN DENBY,
Secretary of the Navy."

Plaintiff's Exhibit 172, letter dated January 22, 1923, from Secretary Fall to Commissioner Spry of the General Land Office, reads as follows:

PLAINTIFF'S EXHIBIT No. 172.

"Dear Mr. Commissioner:

As you will recall, the administration of the Naval Petroleum Reserves has been placed in this Department by Executive Order of the President. Within the reserves are certain leased areas title

to which rests upon claims initiated before the reserve was created. The papers relating to such leases are in your office and constitute a part of the public files of this Department.

At the request of the Navy Department, and in pursuance of the war plans of the General Board, I have made certain exchange arrangements and agreements under which contractors are charged with the responsibility of drilling offset wells and performing other development as ordered by the Government, upon lands within the reserves but outside the leased areas mentioned above. These contracts form part of the confidential records of the Navy Department and are not for public inspection. Copies [361—279] have been deposited with the Bureau of Mines for guidance of the officers of that Bureau in enforcing the contracts, and may be inspected by you as occasion arises, but are not considered to be part of the files of this Department.

Leases have been issued to limited areas in Petroleum Reserves No. 1 and No. 2 in California under the authority of the Act of June 4, 1920, and the records are, I understand, now in your Department. Since these relate to Navy, rather than Interior Department business, you will please transfer all the papers to the Bureau of Mines so that the records belonging to the Navy may all be in one place.

No portion of the Naval Petroleum Reserves are

now subjected to entry in any form or to leasing through this Department.

Respectfully,

FALL,
Secretary."

Thereupon, under exhibit numbers as hereinafter stated, correspondence consisting of applications for leases, and replies by officers of the Navy and Interior Departments to those applications, was offered by the plaintiff, and admitted in evidence by the court over, as to each and all of said communications severally, objections of the defendant on the ground that the said correspondence and the contents thereof are irrelevant and immaterial to any of the issues in this case; that the defendant had not been shown to have had any connection with or knowledge of the same, or to be in any way affected thereby; and that as to the defendant, the statements made by the writers are hearsay, and the evidence incompetent. To the overruling of each and every objection to each and every of the said exhibits, severally made, the defendant reserves separate exceptions. The court also reserved to the defendant the right to hereafter move to strike from the evidence in the case the [362—280] said exhibits. This correspondence, with the omission of the immaterial parts, being in substance as follows:

Exhibit 173, letter from Spaulding Gas and Petroleum Company, Taft, California, dated February 18, 1921, to Commander Landis of the Navy, San Francisco, proposing to lease the northwest

quarter of Section 1, T. 31 S., R. 24 E., and the northeast quarter of Section 2, T. 31 S., R. 24 E., from the Navy or Interior Department, for such period as is usual in oil leases from the Government, subject to the usual provisions of such leases and other provisions which the Navy Department may require and which are equitable to both parties, on the following royalties: 50 per cent of oil produced from wells producing 251 barrels or more each day, averaged at the end of each calender month; 25 per cent from wells producing 250 barrels or less each per day; excepting such oil and gas as is required for fuel purposes in the operation of such development and as may be used in the laying of necessary roads or pavements; all gas and gasoline extracted to be settled for on usual terms; lessor to have the right to take at its expense all gas produced for the extraction of helium; company will at its expense begin drilling within 60 days from date of lease offsetting wells to the present producing wells of the Standard Oil Company and Pacific Oil Company on Sections 35 and 36, T. 30 S., R. 24 E., and continuing until either one of two rows of offsetting wells are completed; offers to furnish necessary references, bonds and other information to prove reliability, efficiency and good faith; believes the matter should have immediate attention as experience has proven that an oil drainage of lands adjacent to present production is an assured fact and that approximately 50,000 barrels of oil production per day from the adjoining section is depleting the Navy's reserve

very rapidly in that immediate vicinity. [363—281]

Exhibit 174, letter from Commander Landis to Chief of the Bureau of Engineering, Navy Department, Washington, D. C., dated February 25, 1921, forwarding the foregoing proposal, stating that the Spaulding Company consists of men well informed regarding the probable oil value of Sections 1 and 2, and that in the event the Navy Department decides to lease any portion of those sections, the writer is convinced that fully competent and reliable companies would be willing to lease on a royalty basis of one-half.

Exhibit 175 is a letter dated at Washington, April 27, 1921, addressed to Mrs. Sue Greenleaf, New York City, signed by Admiral Thomas Washington, Acting Secretary of the Navy, stating that in reply to Mrs. Greenleaf's letter of April 18, 1921, she is informed that the land to which she refers is a small strip in Reserve No. 1, and there is no intention at the present time to lease any of Section 30-31-24; that under the circumstances, it was not believed to serve any useful purpose to discuss the question in an interview.

Exhibit 176 is a letter dated April 27, 1921, addressed to Mr. C. W. Bowen, Erie, Pennsylvania, signed H. A. Stuart, by direction of the Chief of Bureau, replying to Bowen's letter of 18th instant to the Secretary of the Navy, and informing him that the Navy Department put out a proposal for leasing a small strip of land in Naval Petroleum

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Reserve No. 1 a few weeks ago, but time for receiving bids expired April 25, 1921; that it is not the intention of the Navy Department to open up the Naval Reserves generally for exploitation; the only drilling that will probably be done will be in the nature of a few offset wells to protect the reserves from drainage by outside operators.

Exhibit 177 is a letter dated April 27, 1921, addressed to Alvine C. Schott, Massillon, Ohio, signed "H. A. Stuart, by direction of the Chief of Bureau," which is a reply to a letter dated April 22 from the addressee, and is substantially the [364—282] same as Exhibit 176.

Exhibit 178 is a letter dated April 27, 1921, addressed to W. A. Garland, Bellingham, Washington, replying to a letter of April 17th, in all other respects the same as Exhibit 176.

Exhibit 179 was a letter dated April 28, 1921, from Commander Stuart, addressed to W. P. Cole, Coalinga, California, replying to his letter of the 18th instant to the Secretary of the Navy, informing him that it is not the present intention of the Navy Department to develop the Naval Petroleum Reserves; it has been found advisable to lease a small portion of this land in order to counteract drainage by outside operators; it is not the present intention of the Navy Department itself to conduct drilling operations. If addressee desires, it is suggested that he take up the question with Commander Landis, in San Francisco.

Exhibit No. 180 is letter dated April 28, 1921,

from Commander Stuart to J. W. Ragesdale, Taft, California, replying, in the absence of the Secretary of the Navy from the city, to letter from Ragesdale to the Secretary, stating that there is no intention to lease the section to which Ragesdale refers, and that it is still the intention of the Navy to retain the Naval Reserve as intact as possible. The only drilling that will be permitted will be undertaken when real necessity requires offset wells to be put down; as this condition does not exist in the vicinity of section 34-30-23, it is not anticipated that any drilling will be required in this region for some time.

Exhibit No. 181 is letter dated May 5, 1921, from Commander Stuart to L. M. Hale, Connellsville, Pennsylvania, replying to letter of April 29 to the Secretary of Navy, relative to leasing of certain Naval Reserve oil lands, and being in substance the same as Exhibit 176.

Exhibit 182 is letter dated May 5, 1921, addressed to A. B. McBeth, Midway Gas Company, Los Angeles, California, [365—283] reading as follows:

PLAINTIFF'S EXHIBIT No. 182.

Dear Sir:

Replying to your letter of April 19th, I beg to inform you that the decision of the Navy Department to drill a small number of offset wells in the Elk Hills in California has in no way changed the policy relative to a general development of the naval petroleum reserves. It is still the desire of

the Navy Department to hold the reserves intact wherever possible to do so. Such being the case, I do not deem it wise to permit even the gas development of the Elk Hills region of the reserves. As stated in previous correspondence, it is believed that the danger of tapping the oil sands is too great to permit such an undertaking.

While it is extremely unfortunate that the natural gas supply of Los Angeles and adjoining municipalities is so short of their needs, I cannot but feel that the future well being of the Navy should receive my first consideration.

Yours very truly,

EDWIN DENBY.

Exhibit No. 183 is letter dated May 11, 1921, from Commander Stuart to F. W. Janssen, Bakerfield, California, and is in substance the same Commander Stuart's other letters above referred to.

Exhibit No. 184 is a letter addressed to Commander Landis, San Francisco, dated Bakersfield, California, May 17, 1921, signed by R. J. White and H. T. Coffin, stating that White is the owner of placer mining claims embracing all of Section 2, T. 31 S., R. 24 E., Naval Reserve No. 1; that an application for patent to said land is now pending before the Interior Department; that in June, 1919, the Attorney General by request of the Secretary of the Navy, filed protest against said application, and that White, in due time, filed his [366—284] answer thereto; that the protests had never been heard and the application never finally passed upon.

In view of the fact that the north line of said section 2 is a portion of the exterior boundary of the Reserve No. 1, and that the land adjacent is being developed, and large quantities of oil being produced therefrom, it would seem to be a mutual advantage to the Navy Department and to the owners of mining claims in section 2 that some arrangement be made whereby offsetting wells may be sunk along the north line of that section as early as possible, in order to protect petroleum deposits there; that with this end in view, White and Coffin, who owned the equitable interest in the mining locations, proposed to surrender their claims of title if the Navy Department will grant them a lease based on a 20 per cent straight royalty for all oil and gas produced, and covering a strip about 900 feet wide, lying immediately south of and adjoining the entire north line of section 2.

Exhibit No. 185 consists of a letter from Commander Landis, dated at San Francisco, May 25, 1921, forwarding the foregoing application of White and Coffin to the Chief of the Bureau of Engineering at Washington, with the statement that on April 25, 1921, bids for the operation on a royalty basis of a 900-foot strip in section 1 had been received at the San Francisco office and forwarded to the Navy Department at Washington; the drilling of 22 wells on that acreage was considered advisable to protect the Navy's interest against drainage effected by the operations of the Standard Oil Company on Section 36-30-24. A somewhat similar situation is developing in section 2-31-24,

which is being affected by the operations of the Pacific Oil Company on section 35-30-24. Since April 1, one of the Pacific Oil Company wells has been producing 2,600 barrels a day, and three wells of the Standard have come in as 2,000 barrel wells. Quantity estimated at 55,000 barrels per day is being produced on said sections 35 and 36. No suggestion has thus far [367—285] been made to lease a strip in section 2-31-24 for the reason that White and others have an application for patent pending before the Interior Department, based on discovery of fuller's earth. The accumulation and submission of evidence in the case will require a great deal of time during which the interests of the final owner of section 2 is not being protected, and the section will be drained to a considerable extent by the operations of the Pacific Oil Company on section 35 just north. Considering the long delay that will be unavoidable, and the uncertainty as to the final outcome, it would seem advisable to take advantage of their offer by the leasing act to bring about a settlement to quiet title to this section. The proposition of White and Coffin to drill two lines of wells offsetting those of the Pacific Oil Company, and additional wells in the acreage involved at the suggestion of the Navy, on a 20 per cent royalty, is forwarded. Since the settlement involves the surrender on the part of the applicants of all right and title to all of section 2, except a lease to a strip of 900 feet wide, the writer (Commander Landis) recommends favorable consideration of it. The

matter has been discussed with special assistant to the Attorney General, Benjamin, and meets with his approval. Special assistant to the Attorney General Hamel will be in Washington in June, and will be able to furnish detailed information regarding the claim for patent. Other claims are referred to, and the letter closes with, "It is believed that the only claim to be considered is that of R. J. White and H. T. Coffin, who agree to quiet any and all other claims."

Exhibit No. 186 is a letter dated Washington, June 28, 1921, from the Secretary of Navy to the Secretary of Interior, reading as follows:

PLAINTIFF'S EXHIBIT No. 186.

My dear Mr. Secretary:

There is inclosed herewith a copy of a letter from Lieut. Commander I. F. Landis, United States Navy, retired, the officer in charge of the naval petroleum [368—286] reserves in California.

Lieut. Commander Landis inclosed with his letter a letter from R. J. White and H. T. Coffin, a copy of which I am also forwarding for your consideration.

It has been the contention in the past of the Department of the Interior, the Navy Department, and the Department of Justice that Fuller's earth claims in the naval petroleum reserves are of little value. However, in view of the compromise with the Eight Oil Co. and in order to end further liti-

gation and consequent delay in settling this question, it might be advisable to effect some sort of compromise.

In view of the weakness of this claim, it is believed that the claimants will compromise for a much smaller amount of land than they have indicated in the inclosed letter.

Sincerely yours,

EDWIN DENBY,

Secretary of the Navy.

Exhibit No. 187 is letter dated May 25, 1921, addressed to R. L. Welch, American Petroleum Institute, New York, signed by the Secretary of Navy, advising him in reply to letter of May 19, from Welch, that the question of policy with respect to the Naval Petroleum Reserves is now being discussed with the Department of Interior. "Pending a decision as to the policy to be adopted in regard thereto, I am not in a position to discuss the question as it relates to the general oil interests.

"I am, of course, cognizant of the fact that there is at present an over-production of oil and I appreciate the situation in which the oil industry as a whole finds itself."

Exhibit No. 188 is a letter from B. T. Dyer, of the American Oil Engineering Corporation, dated at San Francisco, June 21, 1921, addressed to Commander Landis at San Francisco, and reading:
[369—287]

PLAINTIFF'S EXHIBIT No. 188.

"Dear Sir:

During 1920, and during the time that Secretary Daniels was in office, the American Oil Engineering Corporation through their New York office conferred with Commander Stuart in Washington with a proposal from the American Oil Engineering Corporation to supervise the drilling of Navy Reserve No. 1 and No. 2. After this conference it was suggested by Commander Stuart that our New York Office put the proposal in writing. This was done and forwarded to Secretary Daniels. An answer was not received by the American Oil Engineering Corporation, and to bring this to your attention again, let me respectfully submit a brief of the proposal for your consideration.

Owing to the fact that there will be from time to time offset wells drilled in the Elk Hills and adjoining the Navy Reserve, we propose that an arrangement be made whereby the American Oil Engineering Corporation will undertake the drilling of a well or wells in behalf of the Navy, taking entire charge of the operations and the production and delivering to the Navy at tidewater, either at San Pedro or at the Navy's nearest point at San Francisco, such oil as developed from these wells. As a suggestion, if this Division of the Navy Department should not have appropriations for such development, the American Oil Engineering Corporation would do this development at its own cost

and be reimbursed through the sale of the oil produced at the market prices to the Navy which could possibly be paid from their appropriation for fuel oil. The American Oil Engineering Corporation would do this development, dehydrate the oil, and make such arrangements as necessary for transportation by pipe line to such points desired by the Navy. This all would be done at actual cost on voucher form approved by some representative of the Navy Department. As a compensation to the American Oil Engineering Corporation we would undertake this development and the financing that would be necessary and receive as our [370—288] fee for the engineering and supervision of this work, one-eighth of the oil produced.

You will please understand that the American Oil Engineering Corporation is an independent engineering corporation which have an adequate force of engineers and practical oil men who have been in development oil business for many years, and particularly in the California field.

The American Oil Engineering Corporation would simply act as the agents of the Government or Navy Department in the development, during the work at actual cost and receiving no cash bonuses. Their compensation would be from the 8th royalty as mentioned above. A working agreement between the Navy and the Engineering Corporation could be elastic enough so that should the Navy at any time store sufficient oil, the future product could be disposed of by selling to one of the

existing marketing companies. The American Oil Engineering Corporation have in the past designed and built a number of the largest pipe lines in the United States together with pumping stations and tank farms. Should any construction work of this nature be required this Engineering Corporation are capable of taking care of any such condition that may arise in the future.

We believe that if the Navy Department duly consider this proposal and allow us to have a conference with you and obtain your approval, such arrangement could be mutually agreed upon which would be very satisfactory to your Department.

Were we the marketing company or affiliated with any of the marketing companies, or unable to carry out any of the obligations, we would hesitate to make such a proposal; but, owing to the fact of our being absolutely independent in any such nature, the Navy Department would possibly be favorable to some such arrangement. [371—289]

You will understand this proposal is not in detail, as we naturally do not know the policy of the Government in this connection; but should the Navy desire to have their other royalty oil handled in connection with this work, we are well able to take care of such a condition, delivering to your storage dehydrated oil. We would thank you to consider such an arrangement, and if you can honestly give such an approval or recommendation, we would appreciate to have you forward this along and advise us at 909 of the Nevada Bank Building, and we will particularly appreciate having this proposal reach your

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Honorable Secretary of the Navy, Edwin Denby,
and Commander Stuart at Washington.

Very truly yours,

B. T. DYER."

Exhibit No. 189 is letter addressed to Hon. Albert B. Fall, Secretary of the Interior, dated June 29, 1921, reading as follows:

PLAINTIFF'S EXHIBIT No. 189.

"My dear Mr. Secretary:

I am forwarding herewith copy of a letter from Lieutenant-Commander I. F. Landis, U. S. Navy, Retired, the officer in charge of the Naval Petroleum Reserves in San Francisco, in which the American Oil Engineering Corporation offered a proposal to supervise the drilling of Naval Reserves No. 1 and No. 2.

While it is not contemplated that there will be an intensive campaign conducted in these reserves, it is believed that the proposal of the American Oil Engineering Corporation is worthy of consideration in case it is decided to drill further offset wells in these reserves.

Sincerely yours,

EDWIN DENBY." [372—290]

By Exhibit 190, dated at Washington, July 26, 1921, addressed to the attention of Commander Stuart, the Navy Department, Messrs. Penfield and Penfield, "as Washington attorneys for the Union Oil Company of California," requested to be advised as soon as action is taken on that company's

proposition submitted August 27, 1920, to handle oil from the California Naval Reserves. Replying to this letter, Commander Stuart, under date of August 5, 1921 (Exhibit 191), informed Penfield and Penfield that the question of exchanging crude oil from these reserves for fuel oil has been turned over to the Department of the Interior, and it is suggested that the matter be taken up directly with that Department as soon as possible.

Exhibit 192 consists of a letter from Francis V. Keesling, attorney at law, San Francisco, addressed to the Navy Department, dated September 12, 1921, asking to be advised of the procedure necessary upon application to lease oil lands in naval reserve pursuant to the act of June 4, 1920.

Exhibit 193 is a reply to Mr. Keesling, dated September 23, 1921, signed by A. J. Hepburn, Acting Chief of the Bureau of Engineers, stating that application for such lease could be made to the Secretary of the Interior, and adding that the Navy Department, however, is opposed to drilling the Naval Reserves, and this view is concurred in by the Department of the Interior, except where it is necessary to protect the Government's interests by sinking offset wells where the land on adjoining property is being drilled.

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Exhibit No. 194 reads as follows:

PLAINTIFF'S EXHIBIT No. 194.

"Honorable Albert B. Fall,
Secretary of the Interior,
Washington, D. C.

Dept. of the Interior.

Received

Nov. 22, 1921.

To Bu. of Mines,

Secy.'s Off. Mails & Files.

Dear Sir:

Pursuant to your suggestion to Mr. Cole, Mr. Todd and [373—291] Mr. David at recent conference, the following proposal or outline is presented for and on behalf of Mr. Burton P. Porter and his associates, for your consideration:

Fully appreciating the many vexatious problems confronting you in administering the affairs of your Department, may we offer our aid in this matter, and to that end present a brief resume of the new conditions as we understand them.

During President Taft's administration an attempt was made to withdraw from entry and segregate certain oil lands in Kern County, California, designated areas to be called "Naval Reserve No. 1 and No. 2," as a part of the plan the oil deposit was to be left in natural storage for use by the Government in the event of an emergency.

This plan and purpose to carry out the letter and spirit of the conservation of natural resources.

Unfortunately, as you know, for the one hundred per cent success of this plan, certain companies and

individuals, having vested rights to substantial portions of oil lands within these reserves and some immediately outside of same, have drilled and are drilling many wells that by reason of the well known fugitive nature of oil and gas have and are draining the territory to the extent that the Government's oil deposits are seriously menaced.

If these operations are not met by not only offsetting, but also anticipating wells, in due time the reserves will be materially depleted and exhausted to an extent that operation of the Government lands will be unprofitable to both the nation and the operator.

Under existing circumstances it is respectfully urged that a development plan be adopted that will adequately protect the lines; that oil deposits be removed and stored at the earliest possible moment, thus carrying out the actual conservation plan. [374—292]

As initial wells are conceded to secure a larger production than subsequent wells, by reason of gas pressure and other elements, good oil business requires a drilling campaign, anticipating to a reasonable degree the operation of abutting lease owners, rather than to follow their operation by offsetting wells.

We ask your indulgence for going into some detail in this matter, with which you are so thoroughly familiar, but we have tried to give the subject a careful survey and submit for your consideration our views.

Inasmuch as none of this territory has been formally offered to the oil fraternity for bids, we are

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unable at this time to submit definite figures, but if permitted to make a bid will submit a proposal about as follows:

(1) It is our theory that the entire territory embraced within Naval Reserves 1 and 2 should be developed as rapidly as possible and the saved oil stored above ground for future Government use.

To accomplish this end efficiently will necessitate the division of territory among a number of operators. Each selected operator, however, should be awarded a sufficiently large acreage to justify the large initial expenditure required for successful operations in this field. We respectfully suggest that a section would justify the installation of an efficient plant and organization.

(2) A definite substantial percentage of oil to lessor, dependent upon amount of land involved and where located.

(3) Will build storage, earthen, concrete or steel at locations selected by the Department; storage to be built according to Government specifications and under Government supervision.

Lessee to accept from Government in payment for building said storage, oil, at market price, whether oil is produced [375—293] by lessee or other operators within the reserve.

Will build said storage upon a cost plus basis or upset price.

There being no appropriation for building storage, the above plan will enable the Department to accomplish purpose of conserving the oils without

the expenditure of money. The enterprise will carry itself.

(4) We will agree to drill the wells necessary to be drilled to properly develop a given tract and will prefer leaving the ultimate number of wells and the locations thereof to the final judgment of your Department.

(5) We are in a position to furnish necessary and sufficient machinery, tools, appliances, material and organization to carry forward in a workman and business like manner the involved operation.

Resume: The Government planned to conserve certain oils in natural storage. The original conservation plans miscarried.

To redeem the situation it is practicable, feasible and advisable to produce and store said oils in Government owned storage.

We believe we can be helpful to work out and consummate such a plan.

Respectfully submitted,

(a) BURTON P. PORTER.

By WILLIAM L. DAVID.

November 3, 1921.

Address all communications to—

John E. Todd, New Willard Hotel,

or

Ralph D. Cole, Bachelor Apts.,

Washington, D. C.

Exhibit No. 195 is a letter to B. J. Bradner, Los Angeles, California, from William Spry, Commissioner of the General Land Office, dated at Washington, September 28, 1921, which, together with un-

dated note from B. J. Bradner appended to the [376—294] foot thereof, reads as follows:

PLAINTIFF'S EXHIBIT No. 195.

“My dear Sir:

In reply to your letter of September 17, 1921, you are advised that the land described, being part of Sec. 12, T. 31, S. R. 24 E., M. D. M., California, was included in the petroleum withdrawal of September 27, 1909, was withdrawn under Executive Order of July 2, 1910, and was included in Naval Petroleum Reserve by Executive Order of September 2, 1912. In view of the status of the land, any rights which prior locators may have are governed by the provisions of Secs. 18 and 18a of the Act of February 25, 1920 (41 Stat., 437). See the oil and gas regulations, Circular 672. At this time leases of lands in the Naval Reserve will not be issued unless for administrative reasons it is considered advisable to develop the oil in the lands, a matter as to which the Secretary of the Navy will be consulted.

Very respectfully,

WILLIAM SPRY,

Commissioner.

Will you please take this up and advise me if the Navy Department will cooperate with the Land Department in granting a lease in order that the stockholders of the Midway-Valley Oil Company may again drill the premises and have an opportunity to recoup themselves for the loss they incurred

through ignorance or mistake of their driller.

Very truly yours,

B. J. BRADNER."

Exhibit No. 196 consists of a letter from the Secretary of the Navy, dated October 13, 1921, addressed to B. J. Bradner, attorney, Los Angeles, California, reading:

PLAINTIFF'S EXHIBIT No. 196.

Sir:

Replying to your letter of the 5th instant, I beg to inform you that I have forwarded same to the Secretary of [377—295] the Interior under whose supervision the Naval Petroleum Reserves have recently been placed by an executive order of the President.

The remarks of the Commissioner of the General Land Office as quoted in your letter are noted and insofar as the Navy Department is concerned there is no immediate prospect of granting any permits or leases on any portion of Section 12-31-24; it is desired, if possible, to retain this section as a portion of the Naval Reserves and to hold the oil, if any, underlying it in the ground for future use.

The Navy Department is fully acquainted with the records in this case and while it may sympathize with you for the loss your company claims to have incurred it cannot admit that the company has any legal rights to any portion of this land.

Yours very truly,

EDWIN DENBY,
Secretary of the Navy.

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Exhibit No. 197 is a letter dated November 9, 1921, addressed to Thomas R. Littlepage, Washington, D. C., reading as follows::

PLAINTIFF'S EXHIBIT No. 197.

"Dear Mr. Littlepage:

Referring to application filed by you on behalf of Mr. R. D. Clarke for lease of certain lands in Petroleum Reserve No. 1, California, and to your recent personal visit to urge early action thereupon, I have to advise you that the whole question of dealing with lands and oil in naval reserves and the method to be followed in connection therewith is under investigation and consideration by Secretary Fall. Until some definite conclusion is reached, no action will be taken upon applications of this character. I trust however, definite conclusion will be reached within the next few weeks.

Respectfully,

(Sgd.) E. C. FINNEY,

First Assistant Secretary." [378—296]

Exhibit No. 198 is letter dated at Washington, December 20, 1921, addressed to Mr. F. W. Clements, Washington, D. C., reading as follows:

PLAINTIFF'S EXHIBIT No. 198.

"Dear Mr. Clements:

Referring to your personal visits and to telegram from Lawler and Degnan, asking for lease on a portion of section 30, township 31 south, range 24 east, M. D. M., California, I have to advise you that no policy has yet been determined upon as to the hand-

ling of lands in Naval Reserve No. 2 not covered by existing claims or preference rights. I deem it advisable, therefore, to defer action upon your request and those of others received in connection with lands similarly situated until Secretary Fall's return after the first of the year. At that time the matter will be taken up and you will be further advised.

Respectfully,

(Sgd.) E. C. FINNEY,
Acting Secretary."

Exhibit No. 199 is a letter dated January 7, 1922, addressed to Florian B. King, Austin, Texas, reading as follows:

PLAINTIFF'S EXHIBIT No. 199.

"Dear Mr. King:

In the absence of Secretary Fall, I am replying to your letter of December 27, 1921, relative to obtaining a permit or lease in Naval Reserve No. 1.

In Naval Reserve No. 1, three tracts have been advertised recently for competitive bid. The large companies operating in that vicinity have placed bids on these tracts, but on account of the intensive drilling requirements and large amounts of capital needed to develop these reserves, none but the largest operators have seen fit to bid.

It is the policy of the Government to keep this reserve intact, insofar as possible. In the three instances mentioned, it has become necessary to grant leases to protect [379—297] the Government's interests. However, it is not the intention of the Department to lease other acreage inside of

Naval Reserve No. 1 at this time. Thus, the bids on tracts which have been thrown open have been closed, but if at a later date, it is decided to throw open other tracts within the reserve to the public for bid, I am sure the Secretary will be glad to inform you of the tracts and the terms and conditions relative thereto.

All the leases issued in Naval Reserve No. 2 have been awarded to operators with preferential rights.

Secretary Fall is now in the West. It is my opinion that this matter would not warrant your coming to Washington at this time.

Respectfully,

(Sgd.) E. C. FINNEY,
Acting Secretary."

Exhibit No. 200 is dated February 2, 1922, and reads as follows:

PLAINTIFF'S EXHIBIT No. 200.

"Memo. for Secretary Finney:

Frank R. Stewart has only recently been appointed and confirmed as Collector of Internal Revenue for Arizona. Of course he was active in behalf of the party during the last campaign and thinks that he and his friends should be rewarded by receiving special consideration when oil lands are leased. I told him that it was my understanding that for the present at least, no more leases would be granted in California Naval Reserves but that he would be written fully regarding the situation, and that if later on it is decided to contract for more drilling he and his associates would be afforded

an opportunity to submit a bid, etc. Will you please write him.

CVS."

In connection with the foregoing exhibit, counsel for [380—298] plaintiff stated that the initials "CVS" are those of Mr. Safford, whose title, as testified to by the witness Finney, was that of Administrative Assistant to the Secretary of the Interior.

By letter dated February 4, 1922, Exhibit 201, from George R. Wickhan, Assistant Commissioner of the General Land Office, Washington, D. C., to Frank R. Stewart, Phoenix, Arizona, there was transmitted plats of township 30 south, ranges 23 and 24 east, and 31 south, range 24 east, with the statement that the writer had checked the same, and outside of the Naval Reserves, he did not find any land which was open to either lease or permit application.

Exhibit No. 202 is a letter also dated Washington, February 4, 1922, addressed to Frank R. Stewart, Phoenix, Arizona, reading:

PLAINTIFF'S EXHIBIT No. 202.

"Dear Mr. Stewart:

Your inquiry with reference to leasing of oil lands in California Naval reserves has been called to my attention.

Wherever there were existing claims and oil wells within the limits of such reserves, claimants were by the leasing act given a preference right to leases upon their claims, in the event it was determined to

drill up the lands. Therefore, as to such lands there is no authority to make leases to others. There are considerable areas of unappropriated lands in Naval Reserve No. 1, but for the present it is not the intention of this Department or the desire of the Navy Department that such lands be leased any further than may be necessary to offset existing wells upon adjoining patented lands. Some such leases have been awarded and bids have been received for drilling of additional wells on section 2, in Naval Reserve No. 1, to offset wells of the Pacific Oil Company. At present, I am therefore unable to advise you of any definite opportunities to secure oil leases in those reserves.

Respectfully,
(Sgd.) E. C. FINNEY,
Acting Secretary." [381—299]

Exhibit No. 203 is a letter dated February 18, 1922, from Joseph W. Clarke, Attorney at Law, Leadville, Colorado, addressed to the Department of Interior, asking to be advised if there is any disposition on the part of the Government to lease petroleum lands reserved for the benefit of the Navy, and, if so, to be furnished with copies of regulations governing the leasing of same.

Exhibit No. 204 is a letter dated at Washington, March 30, 1922, addressed to Joseph W. Clarke, Leadville, Colorado, reading:

PLAINTIFF'S EXHIBIT No. 204.

"Dear Mr. Clarke:

I regret the delay in answering your letter of

February 18, making inquiry with reference to the leasing of naval petroleum reserves, and requesting copies of regulations applicable thereto. Your letter was mislaid and only called to my attention by my assistants yesterday.

The naval petroleum reserves in California are being handled entirely by this Department and some offset leases have been made thereupon under a general policy but only with reference to specific cases, i. e., we are endeavoring to protect the corpus of the property as much as possible, and are not developing the same more rapidly than necessary; consequently, have only been granting leases or permits for offset wells to protect the Government property against encroachment of private owners.

There are no specific regulations applicable to the leasing of such lands.

Respectfully,
(Sgd.) ALBERT B. FALL,
Secretary."

Exhibit No. 205 is a letter dated March 30, 1922, from Secretary Fall to Hon. Samuel D. Nicholson, United States Senator, acknowledging receipt of letter from Senator [382—300] Nicholson, on March 27, calling attention to the foregoing letter from J. W. Clarke, and stating in substance to Senator Nicholson what is set forth in Exhibit No. 204.

Exhibit No. 206 is a telegram, dated at San Francisco, April 15, 1922, signed A. D'Heur, addressed to H. Foster Bain, Director of the Bureau of Mines, Washington, asking to be advised if any land in

section 34-30-24, Naval Reserve No. 1, has been leased.

Exhibit No. 207 is telegram from Bain to D'Heur, dated April 15, 1922, stating the Department is considering leasing strip of land along east line of section 34-30-24, Naval Reserve No. 1, but no lease has been granted to date.

Exhibit 208 is a telegram from Florian B. King, dated at Austin, Texas, April 17, 1922, addressed to Secretary Fall at Three Rivers, New Mexico, reading, "Would like to bid on line protection lease with drilling contract in naval reserve number one California. Can you give me interview some day this week concerning same."

Exhibit 209 is a letter dated at Washington, April 18, 1922, to Florian B. King, Austin, Texas, signed C. V. Safford, Administrative Assistant, which reads:

PLAINTIFF'S EXHIBIT No. 209.

"Dear Mr. King:

Secretary Fall has started West and I am taking the liberty to answer your letter of April 8, 1922, regarding the possibilities of drilling in Naval Reserve No. 1, California.

The Department instituted the policy of drilling necessary offset wells in Naval Reserve No. 1 to prevent undue drainage from wells located on surrounding land. In general this was handled through competitive bids submitted by different oil companies on request of the Department of the Interior. The most urgent offset wells have been provided for and to my knowledge the Secretary is not

planning to throw open any of Naval Reserve No. [383—301] 1 in the near future. As a matter of fact an arrangement has been made with one of the oil companies holding some patented land within the Reserve itself whereby neither the Government nor this oil company will drill without giving six months notice to the other party. This agreement covers some of the best acreage remaining in Reserve No. 1 and as far as I know the Secretary has no plans to open up this land in the near future.

Respectfully,
(Sgd.) C. V. SAFFORD,
Administrative Assistant.

Exhibit No. 210 is a telegram to Florian B. King, dated at Three Rivers, New Mexico, April 22, 1922, reading:

PLAINTIFF'S EXHIBIT No. 210.

"Am not making additional leases Naval Reserve Number one Expect to do so later and will be glad to consider your application Will return Washington about May fifteenth.

FALL,
Secretary."

Exhibit No. 211 is telegram dated Washington, April 18, 1922, reading as follows:

PLAINTIFF'S EXHIBIT No. 211.

"A. D. Heur,
Pacific Oil Company, Southern Pacific Bldg.,
San Francisco, Calif.
Yours seventeenth. Appreciate your point of

view. Sorry circumstances prevented Secretary accepting your cooperation section thirty-four where lease mentioned my wire fifteenth will probably issue shortly.

H. FOSTER BAIN,
Director, Bureau of Mines."

Exhibit No. 212 is a letter dated at Taft, California, April 26, 1922, reading:

PLAINTIFF'S EXHIBIT No. 212.

"Department of the Interior,
Washington, D. C.

Gentlemen:

Enclosed please find application of R. H. Anderson [384—302] for lease of oil and gas lands under provisions of the Act of February 25, 1920, embracing

The east half of the North-east quarter of
Section 3, Township 31 South, Range 24 East,
M. D. B. and M., Kern Co., California.
located within the boundaries of Naval Petroleum
Reserve No. 1.

Understanding that the policy of the Interior Dept. relative to the lands located in Naval Petroleum Reserve No. 1 (Elk Hills) is to lease the lands adjacent to producing wells, Mr. Anderson has made this application for the above-described lands which are adjacent to the wells drilled and now producing on Section 35 by the Pacific Oil Co.

While he has made application for the east half

of the North-west quarter of said section, he is willing to take that portion of the North-west quarter which would conform to the department's leases heretofore executed in similar cases.

Hoping that this application will receive your careful consideration and that applicant will receive a lease upon terms and conditions as have been executed on previous occasions by the Department to lands in said Petroleum Reserve, I remain,

Very truly yours,

H. S. BELL."

Exhibit No. 213 is a letter dated April 28, 1922, from Penfield & Penfield, Attorneys at Law, Washington, D. C., to the Secretary of the Interior, as follows:

PLAINTIFF'S EXHIBIT No. 213.

"Sir:

As Washington attorneys for the Union Oil Company of California, we would respectfully call your attention to the following telegram which we today received from Mr. E. W. Clark, Executive Vice-President of said company:

'Your letter relative to contract between Government and Pan American Petroleum Company for handling and exchange of crude [385—303] oil in California naval reserves for fuel oil and storage at Pacific Coast points. Please advise Secretaries of Navy and Interior Union Oil Company of California is much disappointed that it was not invited to bid on this business and if it is too late to submit proposition in

present case would ask them to please remember that Union is much in the oil business out here both refining crude and fuel oil with adequate storage and transportation facilities and hopes that in future they will bear this in mind to the end that we be given opportunity to bid on any proposal or plan they may have occasion to submit to any oil company.'

It is respectfully requested that the Company be borne in mind in the event of future requests for submission of bids.

Requests for proposals should be sent to the general offices of the Company, which are located in the Union Oil Building, Los Angeles, California.

A similar letter is being submitted to the Secretary of the Navy.

Very respectfully,
PENFIELD & PENFIELD."

Exhibit No. 214 is a letter dated April 28, 1922, prepared in the Petroleum Division of the Bureau of Mines, addressed to Penfield & Penfield, signed E. C. Finney, Acting Secretary, acknowledging the foregoing, and stating that the same will be placed on file for reference.

Exhibit No. 215 is a letter dated April 28, 1922, prepared in the Bureau of Mines, addressed to Scott Ferris, New York City, signed by E. C. Finney, Acting Secretary, acknowledging letter from Ferris of April 19, requesting that he be notified whenever any Government land in the Naval Petroleum Reserve is offered for public bid, stating [386—304] that his name and address has been

noted and that he will receive copy of proposals for bids on Government lands that may be offered for lease within Naval Petroleum Reserves.

Exhibit No. 216 is a memorandum from Finney to Ambrose, dated May 4, 1922, and reading:

PLAINTIFF'S EXHIBIT No. 216.

"Dear Ambrose:

I am inclined to think the best way to dispose of this matter is to frankly state that in connection with the exchange of government royalty for fuel oil, the Department has arranged to lease the NE $\frac{1}{4}$ Sec. 3 to the Pan American Oil Co. If you agree with this view, please prepare letter to Bell accordingly.

FINNEY."

Exhibit No. 217 is a letter dated Los Angeles, May 5, 1922, from B. J. Bradner, Attorney at Law, to William Spry, Commissioner of the General Land Office, Washington, D. C., reading:

PLAINTIFF'S EXHIBIT No. 217.

"Sec. 12-31-24, Elk Hills

Kern County, California.

Dear Sir:

I call your attention to your letter of September 28th, 1921, relative to the 200 acres in said Section that were drilled by the Midway Valley Oil Company. In accordance with your letter, I took the matter up with the Secretary of the Navy, and he said the matter was referred back to your Depart-

ment as you were solely in charge of the Naval Petroleum Reserves.

I am now informed that the Naval Reserve lands are being leased in some instances.

I have again written to the Secretary of the Navy and also call your attention to this matter, that it may be possible for us to secure a lease on that Section and drill another well thereon. We undoubtedly passed up the oil producing sand through lack of knowledge at that time in the drilling of that territory, as we drilled the well 5,050 feet and spent in [387—305] excess of \$83,000 on that well.

I think I would have no trouble in getting the co-operation of the original locators and the United Midway Lands Company, our grantors, if that is necessary, but I think that our rights there are entitled to some consideration as we were the only ones to my knowledge, who actually spent a lot of money and worked in good faith to develop the property.

Your early reply will be appreciated.

Very truly yours,

B. J. BRADNER."

Exhibit No. 218 is letter dated May 6, 1922, addressed to H. H. Bell, Taft, California, reading as follows:

PLAINTIFF'S EXHIBIT No. 218.

"Dear Mr. Bell:

Your letter of April 26, 1922, submitting application on behalf of R. H. Anderson for a lease to

oil and gas lands in the E. $\frac{1}{2}$ N.E. $\frac{1}{4}$, Sec. 3, T. 31 S., R. 24 E., Naval Petroleum Reserve No. 1, is received.

As you are doubtless aware, the Navy and Interior Departments, prior to the receipt of your letter, entered into a contract with the Pan American Petroleum and Transport Company for the exchange of the Government's royalty oil from leases in Naval Reserves Nos. 1 and 2 for fuel oil in storage, the company named being the best and lowest bidder. In connection with that bid, the company stipulated that it should be given the option of lease upon the N. E. $\frac{1}{4}$, Sec. 3, and because of the advantage to the Government, the Departments agreed to this situation. Accordingly, the E. $\frac{1}{2}$ N.E. $\frac{1}{4}$ Sec. 3, described in your letter and Mr. Anderson's application can not be leased.

Respectfully,

(Sgd.) E. C. FINNEY,
Acting Secretary."

As rewritten in the Secretary's office. [388—306]

Exhibit 219 is a letter from the Secretary of the Navy to B. J. Bradner, Los Angeles, and reads:

PLAINTIFF'S EXHIBIT No. 219.

May 16, 1922.

"My dear Mr. Bradner:

I have your letter of May 5 wherein you express a desire to obtain a lease for the Midway Valley Oil Company on 200 acres of oil lands in Kern County, California. You are advised that this de-

partment is not now awarding any leases whatsoever in connection with the naval petroleum reserves. These matters are being handled entirely by the Secretary of the Interior for the Navy Department.

Sincerely yours,

SECRETARY OF THE NAVY."

Exhibit No. 220 is letter dated Washington, June 21, 1922, addressed to Mr. Fred Dennett, Washington, D. C., reading:

PLAINTIFF'S EXHIBIT No. 220.

"Dear Mr. Dennett:

I am in receipt, by your reference of telegram from Mr. W. F. Williamson, stating:

We understand leases are being granted without competition covering lands in the Midway field
* * *

Mr. Williamson asks whether you can secure for his company lease in Sec. 34, T. 30, R. 24.

Mr. Williamson's statement that leases are being granted without competition in the Midway field is not quite in accordance with the procedure which has been followed. In that part of the Midway field known as Reserve No. 2, preference right leases have been granted under section 10 of the leasing act to individuals or companies entitled. Several tracts of land not covered by claims were awarded after the submission of bids by a large number of companies and individuals. In Naval Reserve No. 1 the situation is somewhat different,

and a lease was awarded in Sec. 1 thereof to the Pan American Company and the United Midway Company for drilling certain wells after competition. Subsequently a lease was [389—307] awarded to the Pan American for lands in the north part of Sec. 2 and to the Belridge Company for wells along the east line of Sec. 34 to offset drilling on adjoining patented lands, both these companies and others having had applications on file for such leases.

When bids were asked for for exchange of royalty oil from Naval Reserves Nos. 1 and 2 for fuel oil in storage, the best bid received was that of the Pan American Oil Company, with an accompanying condition that the company be given leases in the north part of Sec. 3 and in the east portion of Sec. 34, adjoining the Belridge lease; also that that company should be considered in connection with future offerings that might be made in the east part of Naval Reserve No. 1.

The Secretary of the Navy, the Secretary of the Interior, and their associates, after very careful consideration of all of the bids concluded that it would be to the advantage of the Navy to accept the Pan American bid with this condition attached, and that was done. In pursuance of this undertaking, a lease has been given to the Pan American for the NE. $\frac{1}{4}$ Sec. 3. No other leases have been made, so far as I am advised.

The Department has an agreement with the Pacific Oil Company not to drill a block of land in Reserve No. 1, including the W. $\frac{1}{2}$ Sec. 34, and

parts of Secs. 27, 28, 29, 30, 31, 32, and 33, T. 30, S., R. 24 E.; also parts of Secs. 3, 4, 5 and 6, T. 31 S., R. 24 E., without giving six months' notice in advance to the respective parties to the agreement. Some applications have been received in the west half of the reserve, but it is not the intention of the Department to take action thereon at the present time, as no conclusion has been reached by the Navy Department and this department as to further drilling in said reserve.

Respectfully,

(Sgd.) E. C. FINNEY,
First Assistant Secretary. [390—308]

Exhibit No. 221 is letter from L. E. Eddy, of the Honolulu Consolidated Oil Company, San Francisco, California, dated July 25, 1922, addressed to E. C. Finney, First Assistant Secretary, Department of the Interior, reading as follows:

PLAINTIFF'S EXHIBIT No. 221.

"Dear Mr. Finney:

Since coming west, I am, as a matter of course, not in a position to know of the purposes of the Department except by asking, What I want to know is this:

It has occurred to me that for the purpose of carrying out the announced policy of the Navy Department of storing its fuel oil supply in tanks at quickly accessible Pacific and other points (considered here as a business-like move), it will doubtless be desirable sooner or later to draw upon Naval Reserve No. 1 for part of the Pacific sup-

ply, for which purpose it will become necessary to make some development of the western part of that reserve. Will you kindly advise me, if proper, if you are considering this matter, and if so, the terms that will be extended for such development, with special reference to Section 28, T30S, R23, M. D. M.?

Sincerely

L. E. EDDY."

Exhibit No. 222 is letter from B. T. Dyer, Los Angeles, California, dated July 27, 1922, addressed to A. W. Ambrose, United States Bureau of Mines, Washington, D. C., reading as follows:

PLAINTIFF'S EXHIBIT No. 222.

"Dear Sir:

I am attaching you copies of two separate applications I am making of Elk Hill leases. I would appreciate your considering these and any help you can give me in the matter. I realize the confidence Secretary Fall puts in you in these matters and I would like very much any suggestions or help you can give.

I did not go into details with regard to my talk with [391—309] Mr. Doheny's representative in Elk Hills and I have not seen Mr. Doheny personally so far, but I believe I can in the future bring about a waiver of his preferential right on a small tract.

I dislike going to a lot of friends for help in these matters, if I can work them out alone.

With kindest regards, I am,

Very truly yours,

B. T. DYER."

Exhibit No. 223 is letter from said B. T. Dyer, dated Los Angeles, July 27, 1922, addressed to Hon. A. B. Fall, Secretary of the Interior, and reading as follows:

PLAINTIFF'S EXHIBIT No. 223.

"Dear Sir:

Since calling on you in Washington July 1st, in regard to my obtaining a lease on the East $\frac{1}{2}$ of the West $\frac{1}{2}$ of Section 34, Township 30, South, Range 24 East, Navy Reserve No. 1, Elk Hills, Kern County, California, at which time I discussed this, I advised you I thought it would be possible I could obtain the waiver of Mr. Doheny's preference rights, which I understand cover the East Half of the West Half of this section, I have talked with Mr. J. C. Anderson, Mr. Doheny's brother-in-law, who represents Mr. Doheny in his Elk Hills operations. So far I have failed with respect to obtaining this waiver. As Mr. Anderson thought it would jeopardize their contract with your Department, he preferred that I not ask for same.

However, will you please accept for file my application on this 160 acres as above described, on such terms and conditions as may be acceptable to your department at the time.

It was my hope and intention that I could obtain this lease through giving up the lease from

the Government to Leland et al. and 120 acres in the Northwest quarter of Section 26, Township 30 South, Range 24 East, in [392—310] transferring these rights to the above described ground.

I also intended purchasing the equity of the rights in the Northeast 40 of the Northwest quarter of the said Section 26 to go along with the transfer, which would allow me the full 160 acres.

If you will kindly accept this application, I will appreciate hearing from you at any time. I am prepared to drill this lease in any manner your Department may deem advisable. I can run from one to four strings of tools and drill it up as fast as possible, or I would be willing to delay drilling, unless offset wells were developed.

I can arrange to deliver you at tide water at either San Pedro or San Francisco Harbors dehydrated fuel, barrel for barrel as to the crude production of the lease, or I can deliver you the original crude on the property. I trust this will have your favorable consideration, as our group of locators were very instrumental in the starting of the development in Elk Hills and today our only asset in this district is this Northwest Quarter in Section 26 which is now determined not very valuable.

Per your instructions I am sending a copy of this application to Mr. Ambrose of the Bureau of Mines.

I can furnish such bond as is necessary and refer you to the Farmers & Merchants National Bank of Los Angeles, and Mr. F. H. Hillman, Vice

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President, Standard Oil Co. of Calif., of San Francisco, Calif.

Very truly yours.

B. T. DYER."

Exhibit No. 224 is the following intra-departmental memoranda:

PLAINTIFF'S EXHIBIT No. 224.

"August 4, 1922.

Memorandum for Secretary Fall:

With regard to the inclosed correspondence from [393—311] B. T. Dyer of California, which applies for lease of the East $\frac{1}{2}$ of the West $\frac{1}{2}$ of Sec. 34, T. 30 S., R. 24 E., Naval Reserve No. 1, California:

The land in question constitutes a portion of the area covered by the recent operating agreement between the Secretary of the Interior and the Pacific Oil Company, whereby neither party should drill any wells without first giving six months notice. The entire area subject to this agreement and, in particular, the strip applied for by Mr. Dyer, is not subject to drainage by offset wells. It is felt that this agreement is desirable from the Government's standpoint and, as you recall, it was made with the bureau's cooperation. I, therefore, would not feel justified in recommending that the operating agreement be broken at this time.

In addition, the East $\frac{1}{2}$ of the West $\frac{1}{2}$ of Sec. 34-30-24, Naval Reserve No. 1, is subject to preferential rights granted to the Pan American Petroleum and Transport Company. Before the De-

partment would be justified in leasing this strip to anyone, I believe that consideration would have to be given to the Pan American Company.

Aside from the above-mentioned facts which, in themselves, would seem to justify the rejection of Mr. Dyer's application, I believe the present conditions as regards over-production and low price of oil, render further development of Government lands which are not subject to drainage, undesirable at this time. Therefore, it is recommended that the lease as requested by Mr. Dyer, not be granted.

E. A. HOLBROOK,

Acting Director

For H. FOSTER BAIN,

Director.

Exhibit No. 225 is letter dated Navy Department, August 9, 1922, to the aforesaid B. T. Dyer, reading as follows: [394—312]

PLAINTIFF'S EXHIBIT No. 225.

"My dear Mr. Dyer:

I have your letter of July 29, 1922, addressed to the Secretary of the Navy and informing the Department that you desire a lease for drilling in Naval Petroleum Reserve No. 1. It is noted that you have applied also to the Secretary of the Interior for such a lease.

I would inform you that by an agreement of some time ago, the Secretary of the Interior is charged with the making of arrangements for such development of the Naval Petroleum Reserves as may be

considered necessary, the Secretary of the Interior acting in this regard for the Secretary of the Navy and, under the circumstances, I must refer you to the Secretary of the Interior in this case.

Very respectfully yours,

R. E. COONTZ,

Acting Secretary of the Navy."

Exhibit No. 226 is a letter dated August 9, 1922, by which Admiral Coontz, who was acting Secretary of the Navy, transmitted to the Secretary of the Interior copy of the correspondence between B. T. Dyer and Admiral Coontz.

Exhibit No. 227 is dated Los Angeles, August 9, 1922, addressed to Mr. T. E. Swigart, Bureau of Mines, Washington, D. C., and reads:

PLAINTIFF'S EXHIBIT No. 227.

"Dear Mr. Swigart:

I have your letter of the 4th, relative to my application of July 27th, covering land in ELK HILLS.

I knew of the Pan-American preferential right, this having been explained to me by both Secretary Fall and Mr. Ambrose. I have not given up hope that the Pan-American might waive this to me yet.

Secretary Fall suggested I make my application saying it would have the proper consideration at the right time. [395—313]

As to the agreement between the Pacific Oil Co. and the Government, I told both Secretary Fall and Mr. Ambrose I was agreeable to having a lease subject to this also and that I would be glad to delay

drilling a year or eighteen months if the Department wished. All I am trying to do is to know that later at the right time I will have a sure lease and that my application for one would not be buried and that a later application might get the land. I have an application in for a drilling arrangement, which was made long prior to the Pan-American Co.'s preferential arrangement but as yet have had no reply on it.

I am aware of the over-production conditions at the present time and I see newspaper comments that the Government talks of shutting down further reserve drilling. At the same time Mr. Anderson, of the Pan-American Co. tells me he intends to drill a large portion of the reserve held under their contracts, on a very large scale.

Now, my dear Swigart, I have applied and applied and gone to Washington several times to see what I could do with not much result yet, but I am still on the job. I am able to carry out any financial obligation I undertake and as I personally had a great deal to do with the early development in the Elk Hills at a cost of a lot of hard work and money, I feel your department should play back. This may not be properly diplomatic but it's right.

Very truly yours,

B. T. DYER.

Call on me when you get out to California."

Exhibit No. 228 is dated at Washington, July 31, 1922, and is as follows:

PLAINTIFF'S EXHIBIT No. 228.

"Mr. B. J. Bradner,
912 Wright-Callender Bldg.,
Los Angeles, California.

Dear Mr. Bradner:

Replying to your letter of May 5, 1922, in which you request that consideration be given your company, relative [396—314] to granting a permit to prospect for oil and gas on Section 12, Township 31 S., Range 24 E., in the Elk Hills Field, Naval Petroleum Reserve No. 1, California:

While certain leases have been granted in this reserve, in order to protect the Government's land from drainage, no wells are now being drilled on or near the section referred to in your letter, and the Department cannot consider your application for a lease.

Respectfully,
(Sgd.) ALBERT B. FALL,
Secretary."

Exhibit No. 229 is dated in Washington, August 4, 1922, addressed to B. T. Dyer, Los Angeles, and reads:

PLAINTIFF'S EXHIBIT No. 229.

"Dear Mr. Dyer:

In the absence of Mr. Ambrose, I am replying to your letter of July 27, which enclosed two copies of letters of the same date to Secretary Fall. The Secretary will, no doubt, reply to your application for lease of the East $\frac{1}{2}$ of the West $\frac{1}{2}$ of Section 34, Township 30, South, Range 24 East, Navy Re-

serve No. 1, California, but I am writing this to point out to you why, in my opinion, it would not be possible for the Department to lease this strip of land at the present time.

As you know the Pan-American Oil Company has a preferential right to this strip and, first of all, before any leasing to other parties could take place they would have to waive their claim. As it happens you requested a lease inside of an area which, at the instigation of the Bureau of Mines and with the Bureau's full knowledge, has been made the subject of a special operating agreement by the Government and the Pacific Oil Company. The Secretary of the Interior, acting for the Government, and the Pacific Oil Company agreed not to drill any wells on lands within this area without first giving six months notice. This action was taken to prevent the drainage of [397—315] this portion of the Naval Reserve at the present time. Obviously, I cannot recommend to the Secretary that this operating agreement be broken and the land leased for development.

As you are aware the present over-production in California is in such proportions that the present seems the most unsuitable time for leasing additional portions of the Naval Reserve and, until these conditions are changed, I am doubtful if the Secretary will lease additional portions of the reserve and encourage further drilling.

In view of the facts set forth in the second paragraph of this letter, it would seem that the chances for *your* and your associates to obtain a lease of the

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East $\frac{1}{2}$ of the West $\frac{1}{2}$ of Section 34, Township 30, South, Range 24 East at this time are not very good. Later on, if the Secretary decides to lease other portions of Naval Reserve 1, I feel that, with your application on file, you will be assured of receiving proper consideration.

Very truly yours,

T. E. SWIGART,

Acting Chief Petroleum Technologist."

Exhibit No. 230 is a telegram dated at Washington, August 7, 1922, as follows:

PLAINTIFF'S EXHIBIT No. 230.

"Edmund Burke,
Hotel Atlantic,
Chicago, Ill.

Your wire sixth. Lands described have not been leased. All except Northwest six thirty-one twenty-four within area where Government and Pacific Oil Company have agreed not to drill without notice to other party.

(Signed.) FINNEY,
First Assistant Secretary."

Exhibit No. 231 is a letter dated at Washington, August 12, 1922, addressed to L. E. Eddy, Honolulu Consolidated Oil [398—316] Company, San Francisco, reading as follows:

PLAINTIFF'S EXHIBIT No. 231.

"Dear Mr. Eddy:

This will reply to your letter of July 25, 1922, requesting information relative to further leasing of

land in Naval Petroleum Reserve No. 1, Elk Hills Field, California and with special reference to Section 28-30-23 E.

The Department's policy is not to lease additional lands in Naval Petroleum Reserve No. 1 at the present time and, because of the great overproduction of crude oil in California as well as the low price of oil, I am doubtful if the Secretary will be inclined to modify this policy until conditions improve.

Your application has been placed on file and, also, has been called to the attention of the Bureau of Mines, I feel sure that the Secretary will be pleased to consider a bid from your Company when, in the best interests of the Government, it is decided to lease additional tracts in this reserve.

With kindest regards, I am

Respectfully,

(Sgd.) E. C. FINNEY,
First Assistant Secretary."

Exhibit No. 232 is an Intra-Departmental memorandum dated October 7, 1922, reading:

PLAINTIFF'S EXHIBIT No. 232.

"Memorandum for the Director:

I transmit herewith lease application Visalia 010155 filed by E. H. White, et al., covering Section 2, T. 31 S., R. 23 E., M. D. M., Naval Reserve No. 1.

Reference is made to the attached sketch showing the relation of Section 2, applied for, to the producing area adjacent to it. It will be observed that the nearest production to the applicants land is in

Sec. 36, T. 30 S., R. 23 E., and that the nearest producing well to the tract is Hay No. 17 of the Standard nearly half a mile away from the NE. corner of Section 2. [399—317] Material drainage of oil from Section 2 is therefore not probable.

Mr. W. W. Cutler, of the Bakersfield office, has called attention to the fact that indications of water were found in the gas zone in wells No. 15 of the Pacific Oil Company in Section 31 and well No. 13 of the Standard and suggests that this might signify that gas may not be found in the NW. $\frac{1}{4}$ of Section 1 as this area is rather low structurally. It is presumed that similar conditions would prevail in the NE. $\frac{1}{4}$ of Section 2. However, should commercial gas be present in Section 2, it is not thought that sufficient quantities are now being drained by present wells in Section 36 to make advisable the drilling of protective wells in Section 2.

In view of the fact that present knowledge indicates that Section two is not now being harmfully drained of either oil or gas and also because of the present policy not to lease lands in Reserve No. 1, except to prevent drainage, the bureau engineers recommend that this application be refused.

F. B. TOUGH.

Approved Oct. 11, 1922.

D. A. LYON,
Acting Director for H. Foster Bain, Director."

Exhibit No. 233 is a letter dated at Washington, October 7, 1922, addressed to S. P. Wible, President, Eight Oil Company, Washington, D. C., and reads as follows:

PLAINTIFF'S EXHIBIT No. 233.

"Dear Mr. Wible:

This will acknowledge receipt of your communication filed October 6, 1922, asking for an oil lease on Sec. 30, T. 30 S., R. 24 E., and Secs. 25 and 26, T. 30 S., Ra. 23 E., Naval Reserve No. 1, California, in which the Associated Oil Company and your Company would be equally interested, if granted.

The application refers to the fact that the Associated Oil Company spent large sums of money in prospecting the [400—318] sections mentioned; also that the Eight Oil Company had interests in a number of sections in the reserve, all of which interests, of both companies, were settled and compromised by the former Secretary of the Interior by the granting of leases in sections outside of the naval reserve. The application states that the wells on the lands taken by the companies in return for those surrendered in the naval reserve have proved to be small producers, and that equitably said companies should be given some consideration in the leasing of lands in the naval reserve. It is also set forth that drainage of oil and gas has been for several years and is now going on from Sec. 36, T. 30 S., R. 23 E., a school section, and Sec. 31, T. 31 S., Ra. 24 E., a railroad section, which lands are near the ones sought in your application.

An arrangement to limit production from said patented sections is now under consideration, and if consummated will relieve or reduce the drainage referred to. Aside from the leasing of lands for the purpose of drilling wells to offset producing

wells on lands outside the reserve, and other leases in connection with the securing of fuel oil for the Navy, it has been the policy of the Navy Department and of this Department, particularly in view of the present low prices and over-production in California, not to immediately drill up the remainder of Reserve No. 1. I cannot, of course, undertake to state at this time what the future desires or plans of the Navy Department may be with respect to the development and disposition of its oils in the remainder of this reserve.

Your application, therefore, can not be granted at the present time, but will be placed on file with other applications for further consideration when economic conditions indicate the advisability of further leasing.

Respectfully,
(Sgd.) ALBERT B. FALL,
Secretary." [401—319]

Exhibit No. 234 is a letter dated at Washington, October 18, 1922, addressed to Mr. E. H. White, Bakersfield, California, reading:

PLAINTIFF'S EXHIBIT No. 234.

"Dear Mr. White:

The joint application for an oil and gas lease filed by C. E. White, R. L. McCutcheon and yourself on April 18, 1922, at the local Land Office at Visalia, California, has been forwarded to this office for recommendation. In future correspondence relative to this application please refer to serial Visalia 010155, which number has been given your filing.

The land embraced in your application comprises all of Sections 2, T. 31 S., R. 23 E., M. D. M., California, and forms a part of United States Naval Reserve Number 1. The Government has adopted the policy not to lease lands embraced in this reserve at the present time unless such lands are being drained of their oil and gas reserves from adjacent drilling operations.

The section applied for lies possibly half a mile from the nearest development which is in Section 36, T. 30 S., R. 23 E., to the northeast. At the present time the operators in this section have shut in certain of their wells, thereby curtailing drainage from adjacent sections. The action on the part of the operators has made the drillings of offset wells in the area inadvisable and the Government is, at the present time, unwilling to lease the lands you applied for.

Your application has been placed on file and will be given full consideration at such time as those lands may be available for lease.

Sincerely,

(Sgd.) E. C. FINNEY,
First Assistant Secretary."

Exhibit No. 235 is a letter dated at Washington, October 24, 1922, addressed to F. J. Carman, Los Angeles, California, [402—320] reading as follows:

PLAINTIFF'S EXHIBIT No. 235.

"My dear Mr. Carman:

Referring to your application for oil and gas lease

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to certain ground in Naval Petroleum Reserve No. 1, Elk Hills, California, under date of May 12, 1922, and the amendment to this application under date of June 19, 1922, you are advised that, in view of the present over-production of crude oil, the Department does not consider it advisable to issue leases in Naval Petroleum Reserves Nos. 1 and 2, in California, except when such leases are necessary as a practical expedient to protect the Government's oil properties from drainage by wells on adjacent lands from which the Government receives only a very small royalty, or none at all.

Recently, an agreement has been negotiated, whereby first and second line wells, drilled along the south line of Section 36, Township 30 S., Range 23 E., and Section 31, Township 30 S., Range 24 E. have been shut in, thereby rendering it unnecessary for the Department to lease adjacent land at this time.

Your application, with the amendment, is being filed for consideration at such time as the Department may decide to issue more leases in these reserves.

Sincerely,

E. C. FINNEY,

First Assistant Secretary."

Exhibit No. 236 is a letter dated Washington, October 25, 1922, addressed to Mrs. Mabel Walker Willebrandt, Assistant Attorney General, Washington, and reads:

PLAINTIFF'S EXHIBIT No. 236.

"Dear Mrs. Willebrandt:

I am in receipt of your letter of October 15, relative to the possibility of a friend of yours desiring to bid on a lease under the Leasing Act of February 25, 1920, in Section 34-30-24, Naval Petroleum Reserve Number 1, California.

I wish to advise you that the present policy of the [403-321] Government is not to lease any of the lands within Naval Petroleum Reserve Number 1, unless such lands are being drained of their oil and gas reserves from wells drilled on patented or other lands nearby. This policy has been adopted very largely because of the present over-production of oil.

I shall be pleased, however, to receive a formal application from the parties you write about and on receipt of same will be glad to have the application placed on file with others that have been received. These applications will be given further consideration at such time that the Department deems it advisable to lease additional lands within the Reserve.

Sincerely,

E. C. FINNEY,
First Assistant Secretary."

The foregoing exhibits, numbered 172 to 236, inclusive, were read in evidence over the objections, and subject to the exceptions, hereinbefore stated.

The plaintiff called as a witness in its behalf

**TESTIMONY OF PAUL N. SHOUP, FOR
PLAINTIFF.**

PAUL N. SHOUP, who testified that he is President of the Pacific Oil Company, and of the Associated Oil Company; that the agreement between his company and the Government not to drill certain areas in Naval Reserve No. 1 is still in force, and is being observed by his company, the Government, and the Pan American Petroleum Company.

Mr. Shoup remembers a visit from Dr. Bain to the former's office in January, 1922, in which a conference was had regarding the question of an understanding between the Pacific Oil Company and the Government, whereby there would be no unnecessary drilling done in Naval Reserve No. 1, looking toward the protection of the Naval Reserves or a part thereof, some seven sections; that discussion was preliminary to correspondence already introduced in evidence; Dr. Bain did not mention anything about the Pearl Harbor project, and did not [404—322] lay before the witness at any time the question of exchange of royalty oil for construction at Pearl Harbor.

Upon being asked whether Dr. Bain or any other Government official at any time either in writing or orally, suggested to the Pacific Oil Company the probability of leasing any part of the Naval Reserve No. 1, Mr. Shoup answered that he did not know whether Dr. Bain submitted a proposition or not, but the Navy or the Interior Department called for bids upon fractional sections; with reference

(Testimony of Paul N. Shoup.)

to strip leases on Section 1, Section 2, and possibly some fractional sections. He has never been advised of an intention to make a larger lease. If the matter had been submitted by competitive bidding for lease of the Naval Reserve, his company would have been interested.

Cross-examination.

On cross-examination, Mr. Shoup testified that the Associated Oil Company of which he is president is a subsidiary of the Pacific Oil Company, of which he is also president, in the sense that the Pacific owns about 58 per cent of the stock of the Associated; he is also vice-president of the Southern Pacific Railway Company, which is a small stockholder in the Pacific Oil Company, and which obtains its fuel from that oil company; the Standard Oil Company, as of record, which is the only way he has of judging, owns about 10 or 11 per cent of the stock of the Pacific Oil Company.

When Mr. Shoup saw Dr. Bain in San Francisco in January, 1922, there were present at the conference Mr. Lombardi, acting vice-president of the Pacific Oil Company, Mr. McLaughlin, vice-president of the Associated Oil Company, and perhaps others whom, if they were there, he does not now know. The witness met Dr. Bain in Washington in March, 1922, prior to the end of that month. The witness does not recollect any correspondence between either of his companies and Dr. Bain about the Pearl Harbor project, between January

(Testimony of Paul N. Shoup.)

and the end of March, 1922. It is his recollection that Dr. Bain said nothing about the [405—323] Pearl Harbor project at the time he saw witness in January, and as to when he first heard of the Pearl Harbor project, he thinks it came to him through Mr. McLaughlin, but he cannot say when; he did not become aware of the fact that Dr. Bain and his vice-president, Mr. McLaughlin, conferred on that subject in San Francisco in January, 1922; he did not become aware of the fact that in January, 1922, on the occasion of the visit he has testified about, Dr. Bain explained the plans of the Pearl Harbor project to Mr. McLaughlin, the vice-president of the Associated Oil Company; and he did not know that thereafter, and prior to the opening of the bids, Dr. Bain and Mr. McLaughlin were in correspondence on that subject; he might explain that by saying that he was east, and subsequently returned and was away on sick leave some time during the latter part of March, and not so closely in touch with business as he otherwise would have been; of course, he knew this subject had come up, but he does not recollect the channels through which it came up. The period of time that he was away on account of illness was the latter part of March and the first half of April, 1922. The witness was thereupon asked and answered as follows: "Q. Who in your organization, either as an officer of the Pacific or Associated, would have handled with the Government

(Testimony of Paul N. Shoup.)

such a project as the Pearl Harbor project? A. Mr. McLaughlin."

Plaintiff thereupon offered in evidence contract dated May 22, 1922, between the Pan American Petroleum & Transport Company, and the Associated Oil Company, which was marked Exhibit No. 238, and which, in substance, provided that from its date to a period which it was agreed ended with July 17, 1924, the [Pan American Company sold, and the Associated Oil Company bought, royalty oil received by the Pan American Company under the terms of contract between it and the [406—324] United States dated April 25, 1922, at the posted field price at which the Pan American credited the Government with such oil, for all said royalty oil under 20 degrees Baume, and at a premium of 15 cents per barrel above said posted field price on all said royalty oil 20 degrees Baume, and over.

Plaintiff next offered in evidence as Exhibit 239 contract between the same parties for a period beginning July 17, 1924, and ending February 1, 1925, which in substance provided for the sale by the Pan American to Associated of all of the said royalty oil at the posted field prices without premium.

Thereupon there was received in evidence, subject to the court's ruling ultimately to be made in this case as regards materiality, relevancy, competency and admissibility, on all grounds except the mode of proof, the ruling being reserved by the court,

and the court reserving to the defendants the right to move to strike out the stipulations so read, two stipulations, as follows:

“It is stipulated and agreed that Admiral C. W. Parks, if called as a witness, would testify that he became the Chief of the Bureau of Yards and Docks of the United States Navy on or about January 12, 1918, and remained in active charge of the Bureau of Yards and Docks until in December, 1921. That it was his duty as Chief of the Bureau of Yards and Docks to have charge of the construction of fuel depots for the United States Navy, and in particular, of the preparation and submission to Congress of estimates of appropriations for the purpose of establishing fuel depots, including the construction of tanks for the storage of fuel oil, gasoline and other petroleum products for the use of the United States Navy.

That on October 7, 1918, a sub-committee of the Committee on Appropriations of the House of Representatives was [407—325] considering the first deficiency appropriation bill, 1919, which became the Act of November 4, 1918, Chapter 201, 40 Stat. 1020. That Admiral Parks stated to the sub-committee at that time that the appropriation of \$322,500 requested for fuel oil storage in the bill was to complete the project for tank construction at Yorktown, Virginia. (Hearings before sub-committee of the Committee on Appropriations of the House of Representatives, October 7, 1918, 65th Congress, 2nd Session, p. 788, and estimate of September

23, 1918, 65th Congress, 2nd Session, H. R. Doc. 1307, p. 3.)

That upon the consideration of the Naval Appropriation Bill of 1920, which became the Act of July 11, 1919, Chapter 9, 41 Stat. 131, Admiral Parks submitted estimates for the construction of depots for coal and other fuel in the sum of 805,000 (Estimates for Appropriations for Fiscal Year 1920, 65th Congress, 3rd Session, House Doc. 1430, p. 341). And that included in this sum was the amount of \$141,000 to pay for the increased cost of a project for storing oil at Pearl Harbor, T. H. (Hearings before Committee on Naval Affairs, House of Representatives, Dec. 6, 1918, 65th Congress, p. 469).

That upon consideration of the Naval Appropriation Bill for 1921, which became the Act of June 4, 1920, Chapter 228, 41 Stat. 812, Admiral Parks requested the sum of \$2,135,000 for depots for fuel, of which sum the amount of \$1,000,000 was requested for steel storage tankage for reserve fuel at Pearl Harbor, T. H., and \$1,050,000 for the same purpose at Puget Sound (Estimates of Appropriation, 1921, 66th Congress, 2nd Session, House Doc. 411, p. 410, and Hearings before Committee on Naval Affairs, House of Representatives, February 25, 1920, 66th Congress, 2nd Session, pp. 1418-23).

That upon consideration of the Naval Appropriation Bill for 1922, which became the Act of July 12, 1921, Chapter 44, [408-326] 42 Stat.

122, Admiral Parks requested the sum of \$1,836,000 for depots for coal and other fuel, including the sum of \$126,000 for use at Melville, R. I., and \$150,000 for use at Portsmouth, N. H., and in addition thereto the sum of \$200,000 for fuel oil storage at Cavite, P. I. (Estimates of Appropriations, 1922, 66th Congress 3rd Session, House Doc. 871, p. 405), and that there was no appropriation for the item in question. (Hearings before subcommittee of Committee on Appropriations, House of Representatives, 66th Congress, 3rd Session, January 15, 1921, pp. 368-370, 381-384.)"

And another stipulation reading:

It is stipulated and agreed that if called as a witness Representative John J. Fitzgerald would testify that on May 1, 1917, he was Chairman of the Committee on Appropriations of the House of Representatives, which had presented to the House the bill H. R. 3971, Public No. 23, 65th Congress, 1st Session, which became the Deficiency Appropriation Act of June 15, 1917, Chapter 29, 40 Stat. 182. That on May 1, 1917, this bill was under consideration by the House and that he Representative Fitzgerald, then stated to the House, as reported in the Congressional Record for May 1, 1917, Vol. 55, Part 2, p. 1656, to wit: That the details with regard to the appropriation of \$1,500,000 for fuel oil storage construction had been submitted to the Committee but that the projects upon which this sum was to be expended were not printed in the bill and were not made public because of war

reasons against disclosing the circumstances of the construction of this storage.

It is further stipulated and agreed that if Representative Swagar Sherley were called as a witness he would testify that on October 6, 1918, he was a member of the House of Representatives and was then Chairman of the Committee on Appropriations of the House of Representatives which had presented to the House Bill, H. R. 13086, Public No. 233, which became [409—327] the Deficiency Appropriation Act of November 4, 1918, Chapter 201, 40 Stat. 1020. That on October 6, 1918, while the House had under consideration the aforesaid bill Mr. Sherley then made the statement to the House as reported in the Congressional Record for October 6, 1918, 65th Congress, 2nd Session, Vol. 6, Part 2, p. 11305, to wit: That an estimate of \$165,000 for the construction of fuel oil storage at Pearl Harbor had been submitted to the committee but had been omitted from the bill as reported because it was agreed that this item could be subsequently taken up in the Naval Appropriation Bill for 1920. [410—328]

**TESTIMONY OF WILLIAM A. KENT, FOR
PLAINTIFF.**

WILLIAM A. KENT, called as a witness on behalf of plaintiff, testified that he is chief accountant for the Bureau of Mines and has had charge of the accounts with reference to the two contracts with the Pan American Petroleum & Transport Company for the Pearl Harbor project; he is familiar with the proposal sum referred to

(Testimony of William A. Kent.)

in the contract of April 25, 1922, and knows that the same was increased or decreased by reason of the varying price of fuel oil; the accounts for construction under that contract have been kept in barrels of oil; the witness kept an account of fuel oil delivered, and after the arrangement was somewhat changed that account was kept in dollars but transferred into crude oil every three months; by transfer he means the amount is represented in basic crude oil; he has always kept the construction separate from the fuel oil; he kept the account of fuel oil in such a way that every three months he would carry the fuel oil carried by the Government in dollars in value, and then would translate that into basic crude at \$1.10 under the contract and divide the dollars representing the fuel oil delivered by \$1.10 which would give him the number of barrels of basic crude to be credited to the contractor; when he ascertained the number of barrels of basic crude that a fuel oil delivery represented he put it in the fuel oil account; every delivery of fuel oil, if it was at a different price from \$1.50 a barrel, changed the number of barrels in the proposal sum; the price at which the fuel oil was delivered, with freight, is $\$1.36\frac{2}{3}$ per barrel; when witness got report of the delivery of fuel oil at $\$1.36\frac{2}{3}$ he translated that into barrels of basic crude by dividing it by \$1.10; the proposal sum was thus altered; as a matter of fact, under the new arrangement, witness did not use the figures of the proposal sum; he discarded

(Testimony of William A. Kent.)

them; as far as fuel oil was concerned he carried his accounts in dollars; as regards construction, the witness went over 9 vouchers of the J. G. White Engineering Corporation at the end of every calendar month so as to ascertain if their accounts were correctly kept as to the work done and the material furnished; there were two lines of accounts that were necessary on account of the character of this contract; in the first place, starting with the proposal sum, this amount of basic crude oil was built up by such additions as, first, under the contract where the unit price was given but not the quantity, and again by such changes [411—329] as arose and were authorized by the Navy, and then decreased in the same way under similar conditions; that basic proposal, or the proposal sum at the beginning, has been built up until it now includes many items that it did not include in the beginning, and that will be balanced and can be balanced only when the contract is completed; that would have been sufficient except for Article 12 which made it necessary to keep the exact cost of the work and it was this part that witness obtained through the periodical examinations at least once a month of the records of the J. G. White Engineering Corporation, which were kept in dollars; the dealing through the White Company was entirely in the form of dollars; as to the books of the witness, as far as the costs are concerned they have been kept in dollars to correspond with the records of the J. G. White Engineering Corporation; the

(Testimony of William A. Kent.)

witness on his books has a proposal sum account; that has been increased from time to time; but there are some items in that that will not be added or taken away until the closing of the account in the settlement. As regards the second contract, witness has kept its accounts solely in dollars. The interest provided for in the first contract is added on the books of the witness to the proposal sum in the number of barrels of basic crude oil; it can be calculated in barrels directly, or it can be calculated in dollars and then transformed; he generally calculated it in dollars and then reduced it by the simple formula already mentioned to barrels of basic crude oil; the number of barrels of basic crude oil is not the number that contractor will require because crude oil may go up or down in posted field prices; therefore when he comes to close his books he takes a number of barrels of basic crude oil gotten as a fixed figure by additions to or subtractions from the proposal sum and then he will see whether crude oil is in fact lower or higher than \$1.10, if it is lower it will take more barrels to satisfy the number of barrels of basic crude at \$1.10 and if it is higher it will take less; each run of oil is at the price of the current quotation; as to how these things shall be calculated, the contract provides, and he follows that in accounting. As to his method of calculating interest on the second contract and as to whether the interest compounds monthly, it depends upon what is done with the amount charged, the reading

(Testimony of William A. Kent.)

of the contract is that the amount due for interest shall be first deducted from the oil before credit is given, the seeming and evident [412—330] intention was to wipe out the interest every month; the effect would reduce the amount available for payment on the principal and therefore, in effect, result in compounding the interest; this had been modified to the extent that instead of happening every month the credit is every three months and that modification dates back to the beginning of the second contract, so that the interest has been wiped off every three months; as to whether that compounds interest quarterly it produces the effect he has spoken of; it reduces the amount available for payment on the principal.

There was no cross-examination of the witness and he was excused.

The plaintiff thereupon placed in evidence the following stipulation which had been entered into between the parties;

"It is hereby stipulated by and between the plaintiff and the defendants, by their respective solicitors of record, that at all times referred to in the plaintiff's Bill of Complaint and in the defendants' Answer in the above entitles cause, the following were facts:

"(1) Neither the Secretary of the Navy nor any chief of Bureau, *not* any other person in the Navy, requested at any time the opinion of the office of the Judge Advocate General of the Navy, or any of his associates or assistants, as to the validity, force

or effect of the Executive order of Warren G. Harding dated May 31, 1921; nor was any such opinion requested of or rendered by the solicitor of the Navy.

“(2) At no time was the opinion of the Judge Advocate General's Department or office, or the opinion of the Solicitor of the Navy, requested by the Secretary of the Navy or any chief of bureau of the Navy, or any other officer of the Navy, or of the United States, touching or concerning the validity, legality or form of the contract of April 25, 1922, between the United States and Pan American Petroleum & Transport Company, except as such matters are covered by opinions as regards which the parties hereto have stipulated under date of October 10, 1924.

It is further stipulated and agreed by plaintiff and defendants in this cause, acting by their solicitors of record, that this stipulation may be read to the Court on the trial of said cause and be made part of the testimony therein, with the same force and effect as to the facts hereinbefore set out as if testified to by competent witnesses under oath in open court room.”

Plaintiff thereupon placed in evidence a stipulation between the parties agreeing that the following are facts:

“(1) Relating to the acquisition by the defendant, Pan American Petroleum Company, of lease between the United States of America and the United Midway Oil Land Company, dated July 8,

1921, and lease between the United States and W. R. Ramsey, dated December 14, 1921. [413—331]

“On March 13, 1922, negotiations were opened between said defendant and said W. R. Ramsey, who prior to said date had become the lessee under both of the aforementioned leases, for the assignment thereof to said defendant; said negotiations were opened on that day by said Ramsey offering, subject to the approval of the lessor, to assign the two aforesaid leases in consideration of the sum of \$850,000; in the course of the negotiations which followed said offer the said Ramsey represented, and the said defendant found, that actual expenditures which had thus far been made in the development work on the land leased as aforesaid totaled to March 18, 1922, the sum of \$553,994.72, said expenditures having been for boiler plants, pipe-lines, storage tanks, a fully equipped camp consisting of bunk-house, cook-house, warehouse, drilling tools, casing, warehouse stocks, etc., in connection with the development of the lands under said leases and the bringing in thereon, up to said date, of five completed wells, and the drilling of three additional wells then in process of drilling; said Ramsey further represented that there was at that time due him from the United Midway Oil Land Company the sum of \$148,000, which sum was additional to the aforementioned sum, to reimburse said Company for its prior expenditures on said lands; that the said Ramsey and his assignor had expended the

additional sum of \$162,000 for legal expenses and other administration and overhead items against which there had been credited the sum of \$104,000 received from the sale of oil produced from wells on said lands up to said time. As a result of negotiations between March 13, 1922, and March 25, 1922, assignments of said two leases were made on the last mentioned date by said Ramsey to said defendant together with a conveyance of all of the property, improvements, tools, and equipment owned by the assignor, free and clear of all liens, encumbrances and claims of every nature whatsoever, for the sum of \$750,000; said assignments were executed on the 25th day of March, 1922, and approved by E. C. Finney, First Assistant Secretary of the Interior, on April 7, 1922.

“(2) That on or about the 5th day of January, 1922, R. J. White, and associates, agreed to, and did, deliver, to the Pan American Petroleum Company, a quitclaim to all their right, title, interest and claim in and to section 2, T. 31, S., R. 24, E., in consideration of an agreement to pay to said claimants a royalty of $7\frac{1}{2}$ per cent from all wells thereafter drilled by said defendant upon the northerly strip of said section 2, 1173 feet wide; that the said White and associates have neither received, nor is there any agreement that they shall receive, any royalty from wells drilled in any other part of Section 2 or in any other part of Naval Reserve No. 1 or elsewhere; that the said claim, and the release thereof, covered all of said Section 2.” [414—331-A]

Plaintiff thereupon offered in evidence letter dated December 11, 1922 (Exhibit 241), reading as follows:

PLAINTIFF'S EXHIBIT No. 241.

"December 11, 1922.

Hon. A. B. Fall,
Secretary of the Interior,
Washington, D. C.

My dear Mr. Secretary:

It is reported on good authority that your department contemplates leasing certain parts of naval reserves one and two in the State of California. I do not know whether this report is true or not, but my information from California is to that effect.

While I am opposed to leasing any part of these naval reserves at this time, except that part which it is necessary to lease to protect the reserves from drainage by others through offset wells, if it is the policy of the department to lease these lands or any part of them at this time, I desire to know it, as I have some very reputable, capable, and responsible parties who desire to submit bids to the department for oil leases covering all or any part of these reserves. I suppose that these leases will be let upon proper notice and if notices of this kind are issued, I would be glad to have a copy thereof sent to me at my office.

I would like to have information concerning this at an early date.

Yours very truly,
J. W. HARRELD."

Plaintiff then offered in evidence its Exhibit 242, reading as follows:

PLAINTIFF'S EXHIBIT No. 242.

"December 12, 1922.

Hon. J. W. Harreld,
United States Senate,
Washington.

My dear Senator:

Your letter of December 11th, in which you seek information concerning leases on the naval reserves in California, is received.

The Secretary of the Interior has been acting as the business agent for the Navy Department, under direction of the President, handling naval reserves of the United States. Under this direction, made at the request of the Secretary of the Navy, the matter of additional leases and policy with reference to leases is not left in the sole direction of the Interior Department.

In arranging leases, the terms of same; contracts, etc., touching same, I do so only when requested by the Navy Department.

The Navy Department is a military arm of this Government and information concerning their plans, the details of same, etc., must be secured from the Navy Department itself. [415—332]

I think you can readily see that this is the case and I have no doubt that an application to the Commander-in-Chief of the Army and Navy from yourself will receive favorable attention if it is deemed

to be in accord with the best interests of the Government.

Very respectfully,

ALBERT B. FALL,
Secretary."

Plaintiff next offered in evidence telegram dated at Three Rivers, New Mexico, November 6, 1922, which was marked Exhibit No. 243, and reads as follows:

PLAINTIFF'S EXHIBIT No. 243.

"Finney,

First Assistant Secretary,

Interior Department, Washington D. C.

Am returning proofs and memoranda having no stenographer here will ask you to prepare report for me using your judgment making it not longer than last using Bain and my *ad interim* reports might refer to fact advertise for bids royalty oil think unnecessary go into details naval oils as we merely cooperating with navy but referring such cooperation also to cooperation with agriculture in appointments commission milk river Klamath also.

Possibly public health at Hot Springs and our general cooperative policy stop You had probably best call attention immediately president budget out Alaskan road stop I will not leave until after Fifteenth expect meet Hover and discuss Colorado River.

FALL,
Secretary."

It was stipulated that the foregoing referred to annual report of the Department of the Interior that goes to the President.

Thereupon plaintiff rested the presentation of testimony on its behalf in chief. [416—333]

DEFENDANTS' EVIDENCE.

Before testimony on behalf of the defendants was introduced it was stipulated by the parties, with the approval of the Court, that the right reserved from time to time during the introduction of evidence on behalf of the plaintiff should be exercised after all the testimony in the case has been introduced and that the defendants may proceed with the introduction of evidence without waiving their right to make the several motions when the evidence is all closed.

Thereupon the defendants read in evidence the following stipulation dated October 10, 1924, inviting the Court's attention to the fact that this is the stipulation containing exceptions referred to in the stipulation read by counsel for the plaintiff which made mention of the matters stipulated between the parties "under date of October 10, 1924":

"It is hereby stipulated by and between the plaintiff and the defendants, by their respective solicitors of record, that at all times referred to in the plaintiff's bill of complaint and in the defendants' answer in the above-entitled cause the following were facts:

"In the Navy Department of the United States at Washington there was an office known as the

office of the Judge Advocate General of the Navy; that Julian L. Latimer, an officer of the United States Navy, with the rank of Rear-Admiral, was Judge Advocate General of the Navy; that Commander Walter B. Woodson, an officer of the United States Navy, was Assistant Judge-Advocate-General; that the Solicitor of the Navy Department was Pickens Neagle, and George Dyson was an attorney in said office.

“Under date of November 30, 1921, the office of the Judge Advocate General of the Navy received from the Bureau of Engineering a request for an opinion, signed by Admiral J. K. Robison, chief of that Bureau, a true photostatic copy of the original of which request for opinion is appended hereto, marked Exhibit ‘A.’ ”

(Exhibit “A” reads as follows:

“NAVY DEPARTMENT,
BUREAU OF ENGINEERING,
WASHINGTON, D. C.

30 November 1921.

To: Judge Advocate General.

SUBJECT: Naval Petroleum Reserves—royalty oil from.

1. There is now accumulating for the account of the United States Navy royalty oil from Naval Petroleum Reserves Nos. 1 and 2 amounting to about 1,000 barrels daily. This amount is likely to increase in the near future. It is proposed to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be later desig-

nated by the United States Navy. It is planned that the tanks in which this exchange oil shall be stored shall be provided by the lessor of the oil wells. Will this be legal, it being [417—334] presumed that the oil in storage at Pearl Harbor, as well as the tanks, and appurtenances are to become the property of the United States.

J. K. ROBISON,
Chief of Bureau.”)

“The aforesaid request for opinion dated November 30, 1921, was referred to the Solicitor’s division of the said office of the Judge Advocate General and there was prepared therein by the said George Dyson an opinion dated December 2, 1921, which received the consideration of Assistant Judge Advocate General Woodson, of the said Dyson, and of Judge Advocate General Latimer, and was the subject of consultation among them. Pursuant to the custom of the said office the concurrence in said opinion of the said Dyson and Woodson was indicated on a retained file copy by the initials ‘DY’ and the initial ‘W,’ respectively, near the upper left-hand corner of the first page of said retained copy of said opinion, a true photostatic copy of said retained file copy being hereto appended, marked Exhibit ‘B.’ ”

(Exhibit “B” is the retained file copy of Exhibit “C,” hereinafter set forth in full, and the same is therefore not reproduced here.)

“Said Latimer signed the original of said opinion and it was forwarded to and considered by the Secretary of the Navy who discussed the subject matter

thereof on or about December 5, 1922, with said Latimer and said Robison and in the presence of the two last named officers the Secretary of the Navy approved said opinion indicating his said approval by dating and signing the said opinion at the foot of the second page thereof; at the same time and after the aforesaid discussion, and in the presence of the said Latimer and Robison, the said Secretary of the Navy, Edwin Denby, with his own hand on the margin of the second page of the original of said opinion wrote the following: 'Do this. E.D. Dec. 5th, 1921,' a true photostatic copy of the original of said opinion, showing the original signatures of the said J. L. Latimer and the said Edwin Denby, and the aforesaid marginal notation, being hereto appended, marked Exhibit 'C.' "

(Exhibit "C" reads as follows:

**"DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE
GENERAL, WASHINGTON.**

December 2, 1921.

From: Judge Advocate General,

To: Bureau of Engineering.

SUBJECT: Naval Petroleum Reserves,—royalty oil from.

References: (a) Bureau's letter dated November 30, 1921, 598061-690-C-20.

(b) Bureau's letter dated November 30, 1921, 598-690-6-C-20.

1. Returned.

2. The Act entitled 'An Act making appropria-

tions for the Naval service for the fiscal year ending June 30, 1921, and for other purposes' approved June 4, 1920, provides:

'That the Secretary of the Navy is directed to take possession of all properties within the naval petroleum reserves [418—335] as are or become subject to the control and use by the United States for naval purposes, and on which there are no pending claims or applications for permits or leases under the provisions of an Act of Congress approved February 25, 1920, entitled "An Act to provide for the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," or pending applications for United States patent under any law; to conserve, develop, use, and operate the same in his discretion, directly or by contract, lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof, and those from all royalty oil from lands in the naval reserves, for the benefit of the United States; And provided further, That the rights of any claimant under said Act of February 25, 1920, are not effected adversely thereby; And provided further, That such sums as have been or may be turned into the Treasury of the United States from royalties on lands within the naval petroleum reserves prior to July 1, 1921, not to exceed \$500,000, are hereby made available for this purpose until July 1, 1922: Provided further, That this appropriation shall be reimbursed from the proper appropriations on account of

the oil and gas products from said properties used by the United States at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct.'

3. The Act above quoted authorizes the Secretary 'to use, store, exchange, or sell the oil and gas products from the properties within the naval petroleum reserves, and those from all royalty oil from the lands in the naval reserves for the benefit of the United States.' The authority granted the Secretary of the Navy 'to store' this oil and its products, necessarily carries with it the authority to designate the *place* of storage and the authority to provide the means of storage. The authority granted 'to exchange' is unrestricted; i. e., the Act does not specify nor limit what may be taken in exchange for the oil and its products. Hence, if the Secretary of the Navy desired 'to store' some of the oil and its products, he has the authority 'to exchange' a part of the crude oil for fuel oil or for tanks or for both fuel oil and tanks under such arrangements as he may see fit to negotiate with the lessors or others; and said fuel oil and tanks, so received in exchange, may legally become the property of the United States. Furthermore, the Act makes available the sum of \$500,000 until July 1, 1922, from such sums as have been or may be turned into the Treasury as royalties on lands within the naval petroleum reserves for the purposes of the Act quoted above. Therefore, any part of the sum of \$500,000 now remaining unobligated is available to defray the expenses of 'storing, exchanging or sell-

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ing' the oil and gas products from the properties within the naval petroleum reserves, and those from all royalty oil from the lands in the naval reserves. If any part of this sum is expended for the purpose of *using* the oil by the United States, however, 'the proper appropriation' must be debited with a like amount.

4. Answering your questions, specifically, you are advised:

(a) It would be legal to exchange the royalty crude oil for fuel oil in storage at Pearl Harbor or other points to be designated by the Secretary of the Navy under arrangements whereby the exchanged oil shall be stored in tanks provided by the lessors of the oil wells, such tanks and their appurtenances to become the property of the United States.

(b) It would be legal to use the royalty oil on board vessels of the United States Navy and if so used, it should be expended at such rate, not in excess of the market value of the oil, as the Secretary of the Navy may direct, and should be debited at the rate so fixed by the Secretary to the appropriation. [419—336]

'Fuel and Transportation.,

J. L. LATIMER

5 December, 1921.

Approved:

EDWIN DENBY,
Secretary of the Navy.")

Do this.
E. D.
Dec. 5th,
1921.

"Under date of May 9, 1922, there was received at the office of the Judge Advocate General of the Navy from the Bureau of Engineering, signed by Admiral J. K. Robison, Chief of that Bureau, a request for an opinion, a true photostatic copy of the original of which request is hereto appended, marked Exhibit 'D.' "

(Exhibit "D" reads as follows:

"NAVY DEPARTMENT,
BUREAU OF WASHINGTON,
Washington, D. C.

9 May, 1922.

From: Bureau of Engineering,

To: Judge Advocate General.

Subject: Naval Petroleum Reserves—royalty oil
from.

1. It is requested that this Bureau be informed whether, under the provisions in 'an act making appropriations for the Naval service for the fiscal year ending June 30, 1921, and for other purposes,' approved June 4, 1920, it is legal to build and equip tankage for the storage of fuel and other oils for the Navy, using therefor the \$500,000 mentioned in the act either in part or the whole thereof.

2. This Bureau understands that the words, 'and to use, store, exchange, or sell the oil and gas products thereof and those from all royalty oil lands in the Naval Reserves for the benefit of the United States' mean that it is legal to use this appropriation for the purpose of building and equipping storage to be used for the storage of a reserve supply of

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fuel oil for the Navy. It is a fact, however, that sufficient tankage for this purpose is not now available; is it legal under this act to construct this storage for the purpose stated and with the \$500,000 appropriation mentioned therein?

J. K. ROBISON,
Chief of Bureau.

Copy to: Chief of Naval Operations,
Bureau of Supplies and Accounts.")

"In response to the last mentioned request there was prepared between the date of the receipt of said request and May 15, 1922, by the aforesaid Dyson an opinion which was concurred in by the said Woodson, Neagle and Dyson, the concurrence of Woodson being indicated by the initial 'W' written by him near the upper left-hand corner of the first page of the retained office copy of said opinion; the concurrence of the said Neagle being indicated on the same copy by a symbol, customarily used by him for that purpose, just above the said initial 'W.' A true photostat of the said retained office copy of the last mentioned opinion is hereto appended, marked Exhibit 'K.' The changes noted on said copy, consisting of the figure 19 to indicate the date of the final opinion on the first page, the word 'lessees' to correct typographical error in the use of word 'lessors' on said exhibit, are in the handwriting of said Latimer." [420—337]

(Exhibit "E" is retained file carbon copy of Exhibit "F," having the initials and notations above

referred to on it, and as Exhibit "F" is hereinafter reproduced, Exhibit "E" is not copied herein.)

"On or about May 19, 1922, the said Latimer, after consultation with the aforesaid Woodson, Neagle and Dyson, signed the original of the said opinion which was thereupon forwarded to and considered by the Secretary of the Navy, Edwin Denby, and by him approved, the said approval being indicated by his signature near the foot of the second page of said opinion. True photostatic copy of the original of said opinion, showing the signatures of the said Latimer and the said Denby, is hereby appended, marked Exhibit 'F.' "

(Exhibit "F" reads as follows:

"1st Endorsement:

NAVY DEPARTMENT,

Office of the Judge Advocate General.

May 19, 1922.

From: Judge Advocate General.

To: Bureau of Engineering.

Subject: Naval Petroleum Reserves—royalty oil from.

1. Returned.
2. The Act entitled 'An Act making appropriations for the Naval service for the fiscal year ending June 30, 1921, and for other purposes' approved June 4, 1920, provides: [and the act is quoted in full.]

[Paragraph 3 of this opinion is a copy of paragraph 3 of the opinion of December 2, 1921, quoted above as Exhibit 'C.']

4. Answering the Bureau's question specifically, you are advised:—

That it would be legal to build and equip tankage for the storage of oil and gas products from the naval petroleum reserves, and those from all royalty oil from lands in the naval reserves, and that any part of the sum of \$500,000 now remaining unobligated is available to defray the expenses of 'storing, exchanging or selling' said oil and gas products from the naval petroleum reserves, and those from all royalty oil from lands in the naval reserves.

J. L. LATIMER.

Approved:

EDWIN DENBY,
Secretary of the Navy.")

"On or about December 8, 1922, Admiral J. K. Robison, Chief of the Bureau of Engineering of the Navy, by direction of Edwin Denby, then Secretary of the Navy, referred to the office of the Judge Advocate General of the Navy draft of the contract of December 11, 1922, between the United States of America and the Pan American Company, copy of which is Exhibit 'C' to the plaintiff's amended bill of complaint in this case; the said contract was considered by the said Solicitor and Judge Advocate General and with the exception of a few verbal changes thereon indicated to be made in said office, and which were made in the final executed draft, the said contract was approved by the said Judge Advocate General's office on the 11th day of December, 1922, and the Secretary of the Interior was [421—338] informed of that

opinion and approval on said date before the said contract was executed. This information was conveyed to the Secretary of the Interior by communication dated December 11, 1922, signed J. K. Robinson, Engineer in Chief, United States Navy, a copy of which communication is attached hereto, marked Exhibit 'G.' "

(Exhibit "G" reads as follows:)

"11 December, 1922.

My dear Mr. Secretary:

The copy of the supplementary contract between the Government and the Pan-American Petroleum and Transport Company for accomplishing the completion of the oil storage in Pearl Harbor, etc., has been carefully reviewed by me and by the Judge Advocate General of the Navy. With the exception of a few verbal changes that have been noted thereon, this copy is entirely satisfactory to the Navy Department and is believed to be an advantageous one for the Government to enter upon. I assume that the Interior Department will prepare the final contract for signature and unless otherwise directed will act accordingly.

Very respectfully,

J. K. ROBISON,
Engineer-in-Chief, U. S. Navy,
Chief of Bureau.

Honorable Albert B. Fall,
Secretary of the Interior,
Washington, D. C.")

"It is further stipulated and agreed by plaintiff and the defendants in this cause, acting by their

solicitors of record, that this stipulation may be read to the Court on the trial of said cause, and be made part of the testimony therein, with the same force and effect, as to the facts hereinbefore set out, as if testified to by competent witnesses under oath in open courtroom, and with the same force and effect as to the exhibits above enumerated and hereto appended as if the originals thereof were produced and their authenticity formally proved by competent evidence thereof.

This stipulation entered into at the City of Washington, in the District of Columbia this 10th day of October, 1924.

ATLEE POMERENE,
OWEN J. ROBERTS,

Solicitors for United States of America, Plaintiff.

FREDERIC R. KELLOGG,

FRANK J. HOGAN,

J. J. COTTER,

WELLBORN & WELLBORN,

O'MELVENY, MILLIKEN & TULLER,

Solicitors for Pan American Petroleum Company
and Pan American Petroleum & Transport
Company, Defendants." [422—339]

Thereupon defendants offered in evidence the following stipulation entered into at the City of Washington October 9, 1924, by counsel for plaintiff and defendants, and the same was read to the Court, and marked Exhibit "QQ":

DEFENDANTS' EXHIBIT "QQ."

"It is agreed that the following may be read as the testimony of J. McG. Williamson relating to his

connection with Pearl Harbor contract of April 25, 1922, with same force and effect as if present at trial."

"At some time before the bids were submitted on April 15, 1922, First Assistant Secretary Finney sent for Mr. Williamson and told him that the Government was contemplating doing the work at Pearl Harbor, to be paid for by exchanging therefor crude oil from the California Naval Reserves; that the authority covering the proposition was contained in the Act of June 4, 1920; and Williamson was told by Finney to report to Director Bain of the Bureau of Mines for the purpose of assisting Bain in the legal phases of the matter.

Williamson had no connection with the Executive Order of May 31, 1921, was never asked about it and gave no consideration to the question of its validity.

Williamson gave consideration to the question of the form in which bids would have to be submitted in order to be comparable with one another. He was present at conferences with various people in this connection, including Bain, Ambrose, Dunn and Cotter, and among other things discussed was the formula which was to be used in the bids establishing a ratio between crude oil and fuel oil and construction. Williamson states that in this preliminary consideration of the proposition he was given some little assistance by a man named Tallman (not the Commissioner), an employee of the General Land Office.

Williamson states that the contract was drafted

based upon the alternative B bid of the Pan American Company, and that in connection with its drafting there were conferences between himself and Bain, Dunn, Ambrose and Cotter; that Finney did not participate in these conferences and that the only definite thing he remembers taking up with Finney was the question as to the legal authority to be cited in the contract under which the contract was made, and that at that time Finney adopted the language contained in the contract as follows: 'That by virtue of authority contained in and the policy expressed by applicable Acts of Congress.'

Williamson was not called upon to, and did not, pass upon any question as to legal authority for the doing of what was done. His province was to assist in putting in language the contract which it had been decided to make.

Williamson had no talk with the Solicitor of the Interior Department in connection with the contract, and as far as Williamson knows the Solicitor did not function in any way in connection therewith.

Secretary Fall gave Williamson no instructions whatever. Williamson does not know Fall and never saw him or heard from him in connection with this matter.

Williamson did not know of and has no recollection of the opinion of the Judge Advocate General as to legality."

The foregoing stipulation bears the signature of counsel for the parties. [423—340]

Testimony of H. Foster Bain, for Defendant.

H. FOSTER BAIN, called as a witness on behalf of defendants, testified that he is now Director of the United States Bureau of Mines, and has held that office since May 7, 1921, having been appointed by the President and confirmed by the Senate; prior to that date he was Assistant Director of the Bureau of Mines for one year, during the war, from April, 1918, to April, 1919; he was also Assistant Director and Acting Director from January 1, 1921, to the date he was confirmed as Director; his nomination was sent to the Senate as Director of the Bureau of Mines first by President Wilson in the early part of 1921, and later by President Harding; a statement of his education and experience prior to entering the Bureau of Mines is this: He graduated from the University of Chicago and for several years was a practicing geologist with the Iowa Geological Survey; served for a while with the United States Geological Survey; was the first director of the Geological Survey of Illinois; practiced as a mining engineer and had charge of the operation of mines; was editor of the "Mining and Scientific Press" in San Francisco, the "Mining Magazine" in London, and visited mining properties in various parts of the world; the year of his graduation was 1897, and the foregoing is a résumé of his activities from 1897 to the present time.

The functions of the Bureau of Mines may be thus summarized: It is a Bureau in the Department of the Interior which has several responsibilities, the main one being the study of conditions in mines

(Testimony of H. Foster Bain.)

and mineral industries of the United States with reference to improvement of efficiency, increase of the safety and decrease in waste; it is also the active agent of the Government in the handling of mines and mineral properties which belong to the Government, and in the latter capacity it has charge of the operations on the leases under the various land laws which provide for leasing the public domain for [424—340A] mining purposes. In the Bureau there is a division of petroleum and natural gas, known informally as the Petroleum Division; the head of that, up to a few months ago, was called Chief Petroleum Technologist, but is now the Chief Petroleum Engineer.

A. W. Ambrose joined the Bureau of Mines in 1917 as a petroleum engineer, but passed through various grades and had various duties, so that he was chief petroleum technologist at the time the witness became Director of the Bureau, and he served as chief petroleum technologist up to a time when he was made assistant director, subsequent to which time he resigned, in 1923.

The witness had no knowledge of the executive order of May 31, 1921, prior to its promulgation. As regards when Dr. Bain first came into contact officially with the handling of the Naval Petroleum Reserves, aside from possibly signing letters which passed over his desk and which he signed on the basis of proper initialing by subordinate officers, he had no direct relation with the reserves until some time in the late summer or fall of 1921. At various

(Testimony of H. Foster Bain.)

times in that period, matters relating to the Naval Petroleum Reserves were discussed with the witness by Mr. Ambrose and others in the Bureau, and on a few matters with the Secretary, such, for example, as the provision of funds with which to oversee operations in the reserves, the transfer of funds in the summer of 1921 from the Navy Department to the Bureau of Mines having been made for that purpose.

In the latter part of October, 1921, Dr. Bain was called to the Secretary's office with Mr. Ambrose; the Secretary was there, a representative of the Navy was there, who at the time the witness did not know, but who was Admiral Robison; for a part of the time Assistant Secretary Finney was there, and Mr. Safford, the Administrative Assistant, came in and [425—341] out of the room; according to his recollection, there were others there at different times in the course of a fairly long conversation, which was held with regard to the Naval Petroleum Reserves; notice had come to the witness from the Secretary's office asking him to come to that office for that conference; maps of the reserves were spread out upon the table; those present stood around the table and talked over conditions in the reserves and what should be done with regard to drainage; the witness cannot now remember specifically just what each person said in the exact course of the conversation; he remembers that the drainage which was taking place, or which had

(Testimony of H. Foster Bain.)

taken place, in section 1 as a result of drilling on Standard Oil section 36 was discussed; that the other boundary lines were considered; that the danger of additional drainage in Reserve No. 1 was under discussion; that the condition of Reserve No. 2, with the checkerboarding of public and private lands and the number of leases that had been given, was discussed, as was also the condition of the wells; there was some reference to Reserve No. 3 in Wyoming. The witness mentioned, or Mr. Ambrose mentioned and the witness concurred in, a conversation they had had in Denver with certain geologists with regard to Reserve No. 3 and the drainage there; all these matters were under discussion and the consideration of what should be done about it was the order of the day; Admiral Robison took part in the discussion; he was interested in what was being said and was concerned as to what amount of drainage there was, and where it was taking place, but the witness cannot specifically recall what the Admiral said. His only recollection as regards Assistant Secretary Finney at that time is as to his being present for at least part of the time and standing near the witness when the maps were being looked over. [426—342]

At this conference the Bureau of Mines gave the Secretary of the Interior and to Admiral Robison advice with respect to a policy to be followed in the handling of the reserves, which was this: "We advised the Secretary of the Interior and the representatives of the Navy that it was useless to at-

(Testimony of H. Foster Bain.)

tempt to hold oil in the ground in Reserve No. 2, and that it would be necessary to drill the remaining part of that territory as promptly as was consistent with good drilling practice. With regard to Reserve No. 1, we advised the immediate leasing of a strip along the north line of Section 2 in the eastern end of the reserve, a strip along the south line of Section 25 north of Section 36 in the west side, a strip along the northwest border line of Section 6 near the west end of the reserve, and the further consideration of other strips and other areas as conditions might be developed by drilling on these grounds;" advice was given in regard to making a study of Reserve No. 1 in order to determine upon a future policy; at the end of the conference, there was a summing up by Secretary Fall, with the consent, by silence if not by actual words (the witness does not remember about that) by the others there to the effect that the Bureau of Mines should immediately take steps to secure leases on the unleased part of Reserve No. 2, and that the specific strips in No. 1 above mentioned should be offered for lease by the Bureau of Mines.

The nine telegrams sent out November 14, 1921, to persons having some rights with respect to future leasing in Reserve No. 2 Plaintiff's Exhibits — and —, were drafted in the Petroleum Division of the Bureau of Mines, and were sent pursuant to the conference in the latter part of October about which the witness has testified as above set forth. Dr. Bain is familiar with the

(Testimony of H. Foster Bain.)

letter from the Secretary of the Navy, Mr. Denby, to Secretary of the Interior, Mr. Fall, bearing date [427—343] October 25, 1921, which is known as the "policy letter"; he was advised of the receipt of that letter at about the time of its receipt.

In doing the work above mentioned in respect to the Naval Reserves, the Bureau of Mines was acting in co-operation with other Bureaus, and in the actual handling of leases; at this time the making of leases was done by the General Land Office, as it had been done in the past; the participation of the Bureau of Mines, in this work was progressive, a larger and larger share of the responsibility coming to rest upon that Bureau, and it is hard to say at what particular time there was a change; in the Interior Department there is a General Land Office, and a Geological Survey; at or about the time of the conference held in the latter part of October above referred to, the subject of taking royalty oil and putting it in storage was discussed; witness is not certain whether Pearl Harbor was mentioned at that time; his present recollection is that Pearl Harbor came into the discussion some weeks later, and that at the time of the October conference, the thought was, as expressed by the Secretary of the Interior and Admiral Robison, as to the converting of the royalty crude into fuel oil, and the placing of it in storage, possibly on the leased areas, or at Pacific Coast points.

There came into the hands of Dr. Bain the letter of December 9, 1921, from the Navy Department,

(Testimony of H. Foster Bain.)

signed by Acting Secretary Roosevelt, addressed to the Secretary of the Interior (Plaintiff's Exhibit No. 62); the answer to that letter, made by Acting Secretary Finney, under date of December 10, 1921 (Plaintiff's Exhibit No. 63), was dictated by Secretary Finney in the witness' presence, and as a result of a discussion between them; at a number of conferences, which occurred subsequent to the October conference, instructions were received to arrange for the exchange of current [428—344] crude royalty oil in Naval Reserves for fuel oil for delivery to the Navy, and pursuant to those instructions, by telegraph, arrangements were made with the four pipe-lines then receiving crude oil to make a conversion and hold it subject to the Navy's orders; the Bureau was also instructed to take up with the various companies a discussion as to whether they would make a similar arrangement covering the whole of the following year; that subject was under correspondence in the succeeding weeks; officials of the Bureau discussed with the Navy officers the amount of oil they would need, and up to that time there was confusion as to whether the Naval officers cared to use the oil for current use of the Navy or put it into storage; when the letter of December 9 (Exhibit 62), came, with the plans and specifications accompanying it, it was evident to Mr. Ambrose and the witness and that there would not be enough oil to supply the Navy currently, and also to furnish the storage that they were asking for; this was brought to the at-

(Testimony of H. Foster Bain.)

tention of Assistant Secretary Finney. He wrote the letter of December 10th, with a view of getting a determination on the part of the Navy as to which they wanted to do. Prior to the writing of that letter, Admiral Robison had told the witness that a legal opinion had been rendered by the Solicitor or Judge Advocate-General of the Navy Department, which opinion the witness had not seen at the time the December 10th letter was written, and he suggested to Secretary Finney that it would be desirable to have it; it is fair to say that that letter of December 10th was drawn up by Secretary Finney in collaboration with the witness.

As regards the letter signed by Mr. Finney and sent to the Navy Department, dated December 14, 1921 (Exhibit No. 65), and the letter bearing the same date from the Navy to the Secretary of the Interior, replying to Secretary Finney's [429—345] letter of December 10, and directing that for the present the royalty oil be used for the Pearl Harbor project, the witness has not now in mind clearly Exhibit 65, but has the letter from the Navy (Exhibit 66) clearly in mind. He must have been familiar with both at the time. He asked Assistant Secretary Finney to write to Mr. Cotter the letter dated December 16, 1921 (Exhibit 67). At that time the witness had in his possession letter dated November 28, 1921, from Mr. Doheny to Secretary Fall (Exhibit No. 33) and it was on account of that letter that he asked Secretary Finney to write

(Testimony of H. Foster Bain.)

to Mr. Cotter. To the best recollection of the witness, Secretary Fall had handed the letter of November 28, 1921, to him; witness does not remember what Mr. Fall said when he handed witness that letter, but the Secretary had told witness shortly before that, that either he had asked Mr. Doheny or Mr. Doheny had volunteered to have, an estimate made of the cost of putting up storage to the extent of a million and a half barrels, and that estimate, such as it was, appeared in the letter of November 28, 1921.

Secretary Fall, before he left Washington for the West on December 1st, had told Dr. Bain to prepare a plan for carrying out the wishes of the Navy, and when the various papers referred to came along, including the letters of December 9th and December 14th from the Navy (Exhibits Nos. 62 and 66), which came to Secretary Finney after Secretary Fall had left, they were turned over to the witness with instructions to try to work out a plan which would accomplish what the Navy wanted, and it was pursuant to these instructions that witness asked Mr. Finney to write the letter of December 16th to Cotter.

After the witness presented the letter of November 28, 1921, to Secretary Finney, and asked him to write Cotter, the witness took the November 28th letter back to his office with him, and kept it with the papers relating to this case, it [430—346] being, in his estimation, an engineer's preliminary estimate of the probable cost; at later periods, the

(Testimony of H. Foster Bain.)

witness procured similar estimates from other sources as a guide to him in making up plans for the work; there was no official action that he knows of, other than as above testified, ever taken on the November 28th letter, and from that time on, the same was kept in the files of the Bureau of Mines, where the original remains until the present date.

Dr. Bain arranged to come to the Pacific Coast in connection with the preliminary steps in this Pearl Harbor project in the month of December, 1921, but prior to the time he left Washington, Mr. Cotter, complaint to the letter of December 16, 1921, called on Dr. Bain, that call being some time in the latter half of December.

The witness knew that Mr. Cotter was at that time an officer of the Pan American Petroleum & Transport Company, and he had known Cotter when the latter was private secretary to Franklin K. Lane, Secretary of the Interior, and the witness was assistant director of the Bureau of Mines during the war.

When Mr. Cotter called on the witness, as above testified, there was discussed the ways which the Navy plan might take, as to what kind of a contract could be made, and as to whether it would be possible to make such a contract with an oil company or an engineering company or a combination of the two; Dr. Bain asked Mr. Cotter to find out if his company would bid on proposals of this general type if they were worked out, and Cotter said he thought his company would. At or about that time he had

(Testimony of H. Foster Bain.)

conversations with Admiral Robison on this subject; he cannot place the date; they had frequent conversations; about this time, he learned from Admiral Robison that the latter had secured a definite promise from Mr. Doheny that his company would bid on a plan of this kind if it could be [431—347] reduced to a working basis.

Before leaving Washington, in December, 1921, in addition to the conference with Admiral Robison, witness conferred with Commander Sherman, project manager of the Bureau of Yards and Docks, Navy Department, who came to the office of the witness in connection with the plans and specifications for the first Pearl Harbor project; the witness cannot recall what, if anything, Commander Sherman said to him; whenever plans and specifications, at that or any other time, in connection with the first and the second Pearl Harbor projects were brought to the witness' office, or to the Interior Department Building, they were always brought by a uniformed officer of the Navy, never by messenger and never sent by mail; at times they reached the witness through the Secretary's office, and at times they came direct to him; he received no specific instructions that he recalls other than the phrase in Secretary Roosevelt's letter of December 9, which, quoting from memory, was to the effect that since these matters involved the war plans of the Navy, it was requested that they be treated as confidential as possible, and many subsequent papers that reached the witness'

(Testimony of H. Foster Bain.)

desk were stamped "Confidential," with a large rubber stamp.

Before leaving for the west in December, 1921, witness saw Mr. Gano Dunn, President of the J. G. White Engineering Corporation, under the following circumstances: When the plans and specifications from the Navy Department came to Dr. Bain's desk, he studied them and saw that the work would involve a large amount of engineering and that it would be necessary to have an engineering firm or engineering department construct the works. He knew the J. G. White Engineering Corporation by reputation, and had known many of the officers of that corporation in London, where the witness served on the Commission for the Relief of Belgium, the so-called "Hoover Commission"; [432—348] among the members of that commission was Mr. J. B. White, of the White Engineering Corporation, with whom Dr. Bain sought to get in touch when these plans and specifications came to his office; in this way, he was put in touch with Mr. Dunn, who was President of the corporation; there were long distance telephone conversations, and exchange of telegrams, and an appointment was made on the basis of which Mr. Dunn came down and discussed the matter with Dr. Bain.

Witness identified telegram dated December 16, 1921, from New York, addressed to witness, which, as Exhibit "RR," was introduced in evidence, and reads:

(Testimony of H. Foster Bain.)

DEFENDANTS' EXHIBIT "RR."

To H. Foster Bain,
Director Bureau of Mines,
Washington, D. C.

Mr. Ricard has telephoned Mr. White regarding possibility of J. C. White Corporation being of service in connection with some work in which you were interested. I shall be glad to come to Washington at your convenience if you will let me know when.

GANO DUNN,
President.
43 Exchange Place.

After the receipt of this telegram, witness talked with Mr. Dunn on the telephone, and made an appointment with him to come to Washington to discuss the matter, and Mr. Dunn came Wednesday, December 23, 1921. The witness had met Mr. Dunn prior to that time, but had not at the time realized it. He showed Mr. Dunn the preliminary plans, told him what his understanding was, and what the Navy wanted to do, and asked Dunn's advice as to what type of contract it would be possible to get from engineering firms, or others, to cover this work; they discussed various types of contracts, lump sum, cost plus, [433—349] fixed fee, cost-plus-percentage; they discussed the usual charges for financing and supervision, and various matters of that kind. Mr. Dunn was very generous and very free with his information, and gave

(Testimony of H. Foster Bain.)

Dr. Bain a large amount of data, and also promised to have prepared a preliminary approximate estimate of cost, which he did and which he later brought to witness before he later left Washington for the west, at which time they had a further conversation along the same general lines.

In the first conversation, Dr. Bain explained to Mr. Dunn the necessity, under the existing law and his instructions, to pay for the work with crude oil in the field, and asked Dunn whether his company could take such a contract, and Dunn replied that he thought it could be arranged, but was not sure, and that he would discuss the matter with his associates. The second conversation between the witness and Mr. Dunn occurred December 28th, and at that time Dunn told the witness that the White Company could not take such a contract unless a coincident or parallel contract was made with some oil company which would assure them a market for the oil which came to them. The witness does not recall at that time saying anything to Mr. Dunn about the Pan American Company; to the best of his recollection, Mr. Dunn did not at that time have any knowledge of the Pan American Company or any acquaintanceship with any of its officers.

Witness left Washington December 28, 1921, procuring before he left additional copies of specifications and plans from the Bureau of Yards and Docks, in their then state. Mr. Dunn and the witness had a long conversation as regards whether

(Testimony of H. Foster Bain.)

those plans and specifications were then complete and satisfactory, Dunn pointing out, what would have been clear to any man who examined the plans, that they were very incomplete, and that to make a bid on the basis of those plans would be [434—350] very difficult, except on some form of cost-plus-fee or percentage basis, and that to do the construction work at all would require very much more complete plans. The witness impressed upon Mr. Dunn the fact that the Navy had asked that the whole matter should be treated as confidential as possible, and he instructed Mr. Dunn and all of his contacts to obey the same rule, and secured Dunn's promise that that would be done.

During this same period, this subject matter was discussed by the witness with Mr. Ambrose, and he gave to Mr. Ambrose the same instructions regarding the confidential character of the subject.

In December, 1921, a Mr. Swanson was employed by the Bureau of Mines as Dr. Bain's secretary, and Swanson was on duty there at this period.

When the witness left Washington, on December 28th, he took with him a large roll of maps and plans covering the first Pearl Harbor project; his destination was Los Angeles and San Francisco; he stopped en route at Three Rivers, New Mexico, staying there over night, and seeing Secretary Fall; he told the Secretary of the plans which had been developed in rough outline, and what witness thought it would be feasible to do, and secured the

(Testimony of H. Foster Bain.)

Secretary's approval in general terms, subject to the working out of a contract. Dr. Bain told Mr. Fall that he was on his way to California to consult the large marketing companies there to see how many of them would be agreeable to entering into such an arrangement. The Secretary discussed this with Bain and approved what was being done. As regards what Dr. Bain told Mr. Fall, the former thought was feasible, at that time the witness' impression was that the thing which was feasible to do was to make an arrangement with some oil company to exchange crude for fuel oil to fill any tankage which might be built, and also agree to take any crude [435—351] oil which the Government might turn over to a contractor in exchange for tankage to be built. He told the Secretary what companies he intended to see in California. The witness knew the names of the companies; when Secretary Fall left Washington, December 1st, the witness had received no instructions from him on the subject of whom he was to see; he had nothing in writing with the names of those companies; it was simply in his mind; it will be recalled that the Department had exchange arrangements with four big companies out here at that time; and they were naturally selected by the fact that they were the companies receiving the oil; they were the Standard Oil Company, the Associated Oil Company, the Union Oil Company, and the General Petroleum Corporation, and the witness had determined in his own mind to see those

(Testimony of H. Foster Bain.)

people, and he so told Secretary Fall; as he has already testified, the witness had already before him Mr. Doheny's letter of November 28, 1921, and had talked with Mr. Cotter, so that the five companies he was coming to the coast to consult were the four above mentioned and the Pan American. Dr. Bain stayed at Three Rivers 24 hours, and arrived in Los Angeles the afternoon of January 2, 1922, leaving the night of the 3d for San Francisco. On the 3d he talked over the Pearl Harbor subject in a preliminary way with Mr. Doheny, Mr. Anderson, Dr. Norman Bridge, Mr. Danziger and Mr. Cotter, all officers of the Pan American Company, at their offices in the Security Building, in Los Angeles. At that preliminary conference, witness told the gentlemen named that the plans from the Navy for the Pearl Harbor project had been received; he spread out a set of plans on the table, left them with the Pan American officials for their consideration, and gave them a copy of the substance of the Judge Advocate General's opinion regarding the legality of it, and asked them to take the matter up as to whether they would be prepared to offer a bid covering these things; he [436—352] told them exactly what he had told Mr. Dunn about the confidential character of the subject, and he did this to all others with whom he came in contact in connection with this matter, to the best of his recollection; he was very careful to do that in every case where he had conferences on this subject.

(Testimony of H. Foster Bain.)

Dr. Bain arrived in San Francisco January 4, 1922, where he was joined by C. B. Bowie, resident engineer of the Bureau of Mines, and a few days later by A. W. Ambrose, who had been unable to leave Washington at the time witness did, and who came by way of Denver, and joined the witness in San Francisco. As a result of an appointment made by Mr. Bowie, the witness and Bowie went to the office of the Standard Oil Company of California, in San Francisco, to take up the discussion of three things: First, the exchange which had already been effected by telegraph for November and December crude oil; the exchange or possible exchange of crude oil for fuel oil on the basis as originally thought; and, third, the Pearl Harbor project.

A conference was arranged and held in the office of Mr. H. M. Storey of the Standard Oil Company, and there were present in addition to Mr. Storey, Dr. Bain and Mr. Bowie, Mr. Kingsbury, the President, and Mr. Sutro, the general counsel of the Standard; he does not remember whether Mr. Kingsbury and Mr. Sutro were present during the whole conversation; most of the conversation was with Mr. Storey. Dr. Bain showed the same or a similar set of blue-prints and the memorandum of specifications similar to the ones he had left with the Pan American Company, and gave him the same opportunity to make a bid if he cared to, or rather, asked him whether he would be willing to make a bid if it could be worked out on a busi-

(Testimony of H. Foster Bain.)

ness basis, and asked his advice as to the form in which it could be worked out on a business basis. Mr. Storey, after studying the matter over, said that the Standard Oil [437—353] Company would be interested in the exchange of oil, but that he did not want to do any construction work for the Government; that he would prefer to have his company stay out of that part of the work, and that he believed that the plan under which the construction work should be contracted to an engineering firm, and the exchange of oil contracted to an oil company, and the oil company should *agree purchase* from the engineering firm the oil which the engineering firm received in payment for the construction, was the correct plan.

Mr. Storey also stated that Ford, Bacon & Davis was an engineering firm in San Francisco with which the Standard Oil Company had had very substantial dealings; that they were very well satisfied with the work which that firm had done, and that he would recommend that firm to the Department for this work. The witness asked Mr. Storey for an introduction to the firm, and Mr. Storey called over Col. Black, of Ford, Bacon & Davis, and introduced Bain to him. The same plans were then gone over with Col. Black of Ford, Bacon & Davis, and the various gaps in the plans, the difficulties of bidding on such plans, were discussed, and the form in which such a bid might be made was discussed, and Bain left the plans with Col. Black with the understanding that he was

(Testimony of H. Foster Bain.)

going to study the matter and see whether or not his firm could make such a bid as had been outlined; and, second, he was going to prepare a preliminary estimate of cost for Bain's personal information, which he gave Bain later. Witness' recollection is that this estimate was mailed to him; but he and Col. Black had several conferences that spring. Dr. Bain saw Mr. Storey again on this visit to San Francisco, and they talked further about this matter; Dr. Bain left with the understanding that the matter was under consideration; at the time of the first visit, Mr. Sutro questioned the legality of the thing, but did not, in the presence of the witness at least, express an [428—354] opinion.

While in San Francisco early in January, 1922, Dr. Bain next saw, in regard to the Pearl Harbor project, Mr. D. M. Folsom, Assistant to the President of the General Petroleum Company, in the latter's office in the Alaska Commercial Building; he had, with Mr. Folsom, substantially the same conversation he had with Mr. Storey (as stated in this testimony above), and Mr. Folsom told Bain that he would lay the matter before Capt. John Barneson, President of the General Petroleum Company, and would arrange for a later meeting, which Bain might have with other officers of the company; on Dr. Bain's visit to Mr. Storey's office, he was accompanied by Mr. Bowie, and on the visit to Mr. Folsom's office, he was accompanied by one of the Bureau's engineers, he is

(Testimony of H. Foster Bain.)

not sure now whether it was Ambrose or Bowie, but it was one or the other; during the conversation between the witness and Mr. Folsom, Mr. Wile, the attorney for the company, came in for a few minutes.

During the same visit in San Francisco, in January, 1922, Dr. Bain saw the representatives of the Associated Oil Company, and the Pacific Oil Company, seeing them in that order, according to his recollection, though he is not certain as to the exact order of these conferences. The witness met at lunch at the Palace Hotel, Mr. Paul Shoup (the witness who testified in the case for the plaintiff "this morning," the testimony of this witness being taken in court on the afternoon of the same day that the witness Shoup had testified in plaintiff's case in chief) and Mr. A. C. McLaughlin, the latter being a long time friend of Dr. Bain; he had never before met Mr. Shoup. Dr. Bain was in court when Mr. Paul Shoup testified in this case this morning, and heard Mr. Shoup testify that the official of his company who would have a matter of this Pearl Harbor project in charge was Mr. McLaughlin; Dr. Bain saw [439—355] this Mr. McLaughlin in this courtroom before recess today, the same Mr. McLaughlin he had seen in San Francisco with Mr. Shoup. Mr. Bowie was present at the luncheon at the Palace Hotel in January, 1922, when Mr. McLaughlin introduced Shoup to Dr. Bain. This matter was discussed at the luncheon only in the most general fashion, the conver-

(Testimony of H. Foster Bain.)

sation at the luncheon had to do mainly with the condition of the reserves, their history, the necessity of drilling to prevent drainage, and the interest of the Pacific and the Associated Oil Companies in the lands, and the arrangement already made covering exchange, and the fact that the Government had under consideration larger plans for exchange. If the Pearl Harbor project was discussed in the hotel dining room, it was only in the most general terms. Subsequently, the witness had a discussion with Mr. McLaughlin and Mr. Henderson, who is also a vice president, he believes, of the Associated, and Mr. Jurs, who is the chief engineer of the Associated, in Mr. McLaughlin's office in the Sharon Building. At that time the witness laid before them a set of the blue-prints and plans, discussed with them what he had previously done and formulated his understanding of the conditions, told them the other companies that he had put this matter before, and this he did in each case that he spoke with the representatives of any of the companies; that is, when he saw the representatives of any one of the companies mentioned in this testimony, he told each one of them the others that the matter had been put before, or before whom it would be put, and he treated them all alike in that respect.

At the conference in Mr. McLaughlin's office, with the above-named persons present, there was discussed the possibility of making a satisfactory contract along the lines that the witness had in

(Testimony of H. Foster Bain.)

mind, and which he outlined to them, and Mr. Jurs was instructed by Mr. McLaughlin in Dr. Bain's [440—356] presence to make a preliminary estimate of cost. Mr. Jurs made this estimate very quickly, having it ready within 24 hours, and he gave Dr. Bain a copy, of which the witness identifies a photostat bearing in his handwriting in the corner the words "Made by Jurs in January for Associated Oil Co.," and which also bears a note lower down, in the witness' handwriting, reading "Large limit on unknown factors," which latter notation was made because Mr. Jurs stated, in handing this estimate to Mr. McLaughlin, in Dr. Bain's presence, that these were very approximate figures, due to the fact that the plans and specifications were so extremely general. Thereupon, the preliminary estimate thus made by Mr. Jurs, and identified by the witness, was marked Defendants' Exhibit "SS," and received in evidence and reads as follows:

DEFENDANTS' EXHIBIT "SS."

PRELIMINARY ESTIMATE OF COST TO
CONSTRUCT FUEL OIL STORAGE

Made by Jurs in Jan. for Associated Oil Co. (in
Bain's handwriting)

Based upon specifications and accompanying drawings Nos.—

94393 and 94398

94394 94399

94395 94400

7
3
3

734 *Pan American Petroleum Company et al.*

(Testimony of H. Foster Bain.)

94396 94749

94397 60660

Tank foundations, Excavations and Em-

bankments\$ 216,600

30 Tanks, erected and fitted 1,511,300

Oil and Drain Lines, upper tanks..... 68,900

Oil and Drain Lines, lower tanks..... 40,200

Oil Lines, wharf 14,300

Foam Fire Solution Lines, upper tanks.. 33,700

Foam Fire Solution Lines, lower tanks.. 28,600

Foam Fire Solution Electric Control Sys-
tem all tanks 32,000

Electric Lighting System 22,000

Oiling Embankments 33,000

Dredging 207,900

Concrete Quay Walls, Dolphin, Bulkhead
and Fill 286,900

Engineering, Superintendence, Miscella-
neous & Contingencies, 10%..... 249,500

TOTAL\$2,744,900

Large limit on unknown factors. (in Bain's hand-
writing)

JURS.

The witness continues that in the discussion with Mr. Jurs, Mr. McLaughlin and Mr. Henderson, certain of the specifications were analyzed, and Mr. Jurs' opinion was given to the [441—357] effect that changes could be made which would in no way decrease the value of the work, and which would make the cost less; Dr. Bain asked Mr. Jurs to fur-

(Testimony of H. Foster Bain.)

nish a memorandum of such changes, which the witness might submit to the Navy, and in response to this request, Mr. Jurs furnished the witness with a memorandum which was thereupon offered in evidence as Defendants' Exhibit "TT," and reads as follows:

DEFENDANTS' EXHIBIT "TT."

SUGGESTIONS TO ACCOMPANY ESTIMATE
OF COST OF FUEL OIL STORAGE.

By setting tanks farther apart, the fire hazard will be greatly reduced, and the cost of excavating lessened.

Ditch around upper side of tank foundations for a depth of one foot, and raise lower side of foundation approximately one foot, levelling out for a distance of eighteen inches from the tank.

Costs of earthwork around tanks will be substantially reduced without affecting the value of the embankments for restraining escaping oil, if the ground within the enclosures, and below the level of the tanks, is not filled.

It is believed that the placing of dry cement beneath tank bottoms will not equal the saturation of the sand fill with heavy oil. The lowering of the tanks into final position will probably dislodge the cement covering and allow it to be blown away.

The finished embankments should be sprayed with oil to prevent erosion and blowing dust.

Better protection will be assured the bottom plates

of tanks, if the under sides are carefully scaled and cleaned, and covered with three coats of graphic protective paint.

Swing pipes in tanks should be made single, and of large diameter.

Bottom plates of tanks should be $\frac{3}{8}$ " thick, and bottom angle ring should be not less than six inch, on account of tropical conditions.

The provision of a small steel sump in the bottom of each tank seems of doubtful value.

Two coats of white lead instead of one will be required to cover red priming coat on tank plates. Recommend spray application of paint.

Provision should be made for the distribution of water around tanks and embankments.

Pipe sizes should conform to standard practice. Four inch and six inch should be substituted for the three and one half inch and five inch, respectively.

Certain drawings are inconsistent in requiring eight and ten inch oil lines to be of both steel and cast iron, and some of the drain lines are required to be of both cast iron and terra cotta.

Smaller pipe lines should be galvanized, and larger lines should be dipped or otherwise protected against rapid tropical corrosion. [442—358]

The use of water should be required to insure thorough settling of foundations and embankments.

Paragraph 35 of specifications calls for all screwed pipe fittings. At least the larger sizes should be flanged.

(Testimony of H. Foster Bain.)

Paragraph 48 of specifications requires that wharf hose length be twenty feet. This should be increased to fifty feet unless other provision than is indicated is to be made. The time required for loading or unloading will be materially lessened by substituting eight inch hose for the six inch which is specified.

Derricks or other similar equipment should be provided for the expeditious handling of the wharf connecting hoses.

The in-shore loading connections on wharf are too close to shore to be of practical value.

Construction requirements will make necessary greater detail of wharf front than is afforded in the accompanying drawings.

Experience in concrete wharf construction indicates that piles and concrete exposed to action and spray of sea water should be coated with hot asphaltum to prevent spalling of concrete and corrosion of reinforcing steel.

On the foregoing exhibit, in the witness' handwriting, appears memorandum reading: "Prepared by Jurs on the basis of December plans and submitted to the Navy, H.F.B.," which memorandum witness placed on there simply as a memorandum of where it came from.

Nothing was said at the time in the January conference to which this testimony relates by the officials of the Associated Oil Company about getting the co-operation of any engineering company.

When Dr. Bain left San Francisco, he left with

(Testimony of H. Foster Bain.)

these officials of the Associated Oil Company the December plans and specifications that he has been testifying regarding.

While in San Francisco on this occasion, Dr. Bain had a further conference in the Southern Pacific Building, with Mr. Shoup, Mr. D'Heur, Mr. Lombardi, and part of the time, Mr. McLaughlin, these gentlemen all being officers of the Pacific and Associated oil companies, at which conferences the Naval Reserve No. 1 in particular was talked about, and a preliminary discussion was carried on which led to the agreement between the Pacific Oil Company and the Government with regard to an inner reserve, and area within which the Pacific Oil Company [443—359] agrees not to drill without giving six months' notice, and the Government makes the same agreement. This conversation eventuated in that agreement. There was also discussed bids which had been made for the strip lease in Section 26, Section 6 and Section 2; also Mr. Shoup suggested to the witness an idea to the effect that a lease, or an operating agreement, should or could be made between the Government and the Pacific Oil Company, covering all of the boundary lines, at least, and also the other land in Reserve No. 1, on a basis which would provide that the Pacific Oil Company, whenever it drilled a well on its land, would bring in a corresponding offsetting well on the Navy's land adjacent. The present recollection of the witness is that this was also to cover an agreement that the company would drill where the Navy

(Testimony of H. Foster Bain.)

directed, in addition. This did not result in a negotiation, but was a conversation, and the witness' recollection is not entirely clear on it. Dr. Bain urged that the only objection to such a plan would be that, however carefully the work might be inspected and watched, if at any time a large well came in on the Pacific Oil Company's land, and a small well on the Navy's land, we would be subject to criticism, and that, correspondingly, if there were large wells brought in on the Navy land and small wells on the Pacific land, Mr. Shoup and his staff would be subject to criticism, and that it seemed to witness unwise to attempt to make such an arrangement, but he undertook to put it before the Secretary of the Interior, which he did on his return. Either Mr. Bowie or Mr. Ambrose were present at this conference in addition to the officials of the oil company above named. At that conversation, according to the witness' recollection, the Pearl Harbor project was only referred to in very general terms, for the reason that he had had a specific and detailed conversation with Mr. McLaughlin who told witness that if any bid was made by either the Pacific Oil Company [444—360] or the Associated Oil Company on the Pearl Harbor project it would be made by the latter. Prior to the time Dr. Bain left San Francisco, in January, 1922, Mr. McLaughlin did not say anything to him as to whether his company would or would not bid on the Pearl Harbor project and the matter was left under consideration. Before leaving San Francisco, Dr.

(Testimony of H. Foster Bain.)

Bain saw Commander Landis of the Navy on this Pearl Harbor subject, showed Landis the plans, and told him what was under way.

From San Francisco, Dr. Bain returned to Los Angeles, where, pursuant to an appointment which had been arranged by Mr. Folsom, he met at lunch in the California Club Mr. Folsom and Mr. Barneson, Jr., officials of the General Petroleum Corporation, and one other officer of the company, and Mr. Wile, the company's attorney. On this occasion, Mr. Ambrose was with the witness. They did not get very far in discussing the Pearl Harbor matter, because Mr. Wile promptly announced his opinion that it was illegal, and that he would advise his company to have nothing to do with it. He said that if the power to exchange went as far as the Judge Advocate's opinion indicated that it did, then it was an unlimited power to exchange, and that it would give the Navy authority to exchange oil for a battleship, if they desired to do so, and that he was satisfied that that was without the intent of Congress. He furthermore stated that if the Judge Advocate-General was wrong, that there would be no statute of limitations to protect his company. The witness had given to the officers of all of the oil companies with whom he had had conferences, a copy of the abstract of the opinion of the Judge Advocate-General of the Navy, which appears in the letter of December 14, 1921, from the Navy to the Interior (Exhibit No. 66); in fact, that letter was his credentials to the various companies; and Mr.

(Testimony of H. Foster Bain.)

Wile had before him that abstract of the opinion of the Judge Advocate-General or showed a knowledge of it, in the [445—361] discussion at the California Club referred to above. The witness had already left copies of the Pearl Harbor plans with Mr. Folsom, but at his request they were later transferred to Col. Black, of Ford, Bacon & Davis, so that the latter might have a duplicate set. The conversation in Los Angeles closed the matter, so far as the General Petroleum Corporation was concerned, the upshot of that being that the officials of that company told Dr. Bain they would not be interested further.

On this same visit to Los Angeles, Dr. Bain called on the officers of the Union Oil Company at their building, being accompanied by Mr. Ambrose and Mr. Bowie; Mr. Stewart and Mr. St. Clair, officers of the Union Oil Company, were seen; witness does not know what their official positions were except that they were responsible officers of that company. Some little time was spent at the Union Oil Company's offices, and while there, they also met Mr. Clark, an officer of that company, and during the conversation with Mr. Clark and Mr. St. Clair, another officer of the company, Mr. Gregg, came in for a few minutes. In the conference with the officials of the Union Oil Company, there was first discussed the exchange arrangement which already had been made for the November and December oil, and the plans for exchange for the following year, and the witness told them that on account of the request of

(Testimony of H. Foster Bain.)

the Navy, as regards the Pearl Harbor project, the plans for the following year were to be changed; the witness had with him a copy of the Navy Department's letter of December 14th (Exhibit 66), a roll of the maps and plans and specifications similar to those he had shown the officers of the other companies; in that conversation with the Union Oil Company officials, as regarded the way the thing might be worked out, they said something to Dr. Bain, he cannot remember the phraseology, but in substance that they would be interested [446—362] in the exchange of oil, but did not want to take part in any construction program; the witness does not recall any specific reasons they gave; plans were not left with the officials of this company for the reason that it seemed to the witness improbable that they would be sufficiently interested to warrant it.

On the occasion of this visit to Los Angeles, the witness again saw Mr. Doheny, Mr. Anderson and Mr. Cotter, and perhaps other officials of the Pan American Company, in their office in the Security Building. He had on his previous visit left copies of the plans with the officers, with the suggestion that they reach a decision, and on this second visit he was told by Mr. Doheny that they would be glad to offer a bid on the proposals; the other men, whose names have been given by the witness, were present at the conference, which was not one where they sat down around a table.

The matter of Pearl Harbor project was not taken

(Testimony of H. Foster Bain.)

up with anybody else at this visit of the witness to Los Angeles, and San Francisco, except those mentioned in his testimony above.

Dr. Bain returned to Washington, arriving there January 22d or 23d, 1922; he was accompanied back to Washington by Mr. Ambrose, and on the train they talked over the Pearl Harbor subject, but did not, en route, approach any other oil or engineering company. Shortly after his return to Washington, Dr. Bain met Secretary Fall and Admiral Robison in the Secretary's office, and told them the result of these various conversations with these various oil companies, and that his judgment was that the Standard Oil Company would make a bid in connection with Ford, Bacon & Davis, in some form; that the Associated Oil Company would make a bid, and that the Pan American Company would make a bid; in other words, that he had secured a number of firms to make a bid upon the proposal. He told them of the objections which had been raised, of one [447—363] kind and another, and that he thought a proposal could be framed upon which the objections could be eliminated by a plan—the objections being such as Mr. Jurs' memorandum already in evidence—to engineering features in the plan; the objections already mentioned to the wide-openness of the specifications, the fact that it would make it extremely difficult for anyone to bid a lump sum on construction; that so many unknown factors existed; the objection Mr. Wile made to the legality of the proposal, and the questions Mr. Sutro had raised as to

(Testimony of H. Foster Bain.)

that legality. When the witness made this report to Secretary Fall and Admiral Robison, Mr. Ambrose was also there, according to witness' recollection. As regards the question of legality, Secretary Fall stated that the Judge Advocate's opinion was sound, that the power to exchange was broad enough for this purpose, and that Mr. Wile was perhaps advising his client on the basis of a cautious lawyer who desired to keep his client from getting into any possible trouble. The criticisms of the plans and specifications which the witness has mentioned were taken up with the Bureau of Yards and Docks of the Navy; the witness presented those things to the Navy, but whether he did so through Admiral Robison at this conference, he cannot say.

Following the last-mentioned conference, the witness drew up the proposals of February 15 (Exhibit No. 74); prior to that time he saw Lieutenant Keating and Admiral Robison, and perhaps Commander Sherman, though he is not clear about seeing the latter; his recollection is that he met Admiral Gregory later. Lieutenant Keating had been assigned as liaison officer, and reported to witness and acted as the agent for taking things to the Navy Department, and bringing back their opinions, and he discussed with the witness various points, such as those raised in the Jurs' memorandum; he also, at that time, began to prepare an estimate of cost; the witness [448—364] advised Keating of the estimates of costs which witness had at that time from Mr. Jurs and Mr. Dunn; this was all prior to

(Testimony of H. Foster Bain.)

February 15, 1922. He thinks he received the estimate from Col. Black later. Subsequent to February 15th the estimate of the Bureau of Yards and Docks was made. There was taken up prior to February 15th, with Commander Sherman technical details regarding tank construction. Witness made known to Admiral Robison and Lieutenant Keating the criticisms which had been made on the Pacific Coast with regard to what he had described as the wide-open character of the specifications and plans in their then state.

Before sending out the invitation for proposals which bears date February 15, 1922 (Exhibit No. 74), Dr. Bain had a further talk with Secretary Fall, telling the Secretary the substance of the proposal which was being prepared, and the persons to whom it was to be sent, and received his approval. He did not, so far as he remembers now, show the Secretary the written paper, and certainly Secretary Fall did not sit down and read it over and carefully criticise it. Dr. Bain saw Judge Finney frequently before sending out the February 15, 1922, invitation for proposals. Secretary Fall told Judge Finney and the witness to go ahead and handle this matter; that he was going to be busy on other things; witness does not remember the date on which this was said, but it was prior to February 15, 1922.

Under date of February 15, 1922, the witness sent a letter from his office in Washington to the Standard Oil Company, Ford, Bacon & Davis, the

(Testimony of H. Foster Bain.)

Associated Oil Company, the Pan American Company, the J. G. White Engineering Company, the letter of invitation for proposals accompanying the same, as sent to each addressee, being identical (Exhibit Nos. 73 and 74).

Thereupon, the witness was shown the original of this [449—365] February 15, 1922, communication, received by the Pan American Company, on which in handwriting appears this notation: "Copies sent to the J. G. White Engineering Corporation. H. F. B.," and he testifies that the same is in his handwriting. Across the top of the said exhibit in handwriting appear the words, "Attention J. J. Cotter." The witness is unable to testify as to the handwriting. He is familiar with the handwriting of Mr. Swanson, who was at that time his secretary, but looking at this notation on the February 15th letter, he cannot say whether or not that is Mr. Swanson's handwriting. This original of the February 15, 1922, invitation for proposal was thereupon received in evidence as Defendants' Exhibit "UU," and, except for the notations here testified to and set forth, is the same as Plaintiff's Exhibits 73 and 74.

From San Francisco, California, under date of January 11, 1922, Dr. Bain wrote to Mr. Dunn of the White Company, plaintiff's Exhibit 72, and subsequent to his returning to Washington, but prior to February 15, the witness saw Mr. Dunn frequently, and discussed the feasibility of carrying out this work, and various difficulties and details

(Testimony of H. Foster Bain,)

with regard to it; Dunn again urged the incompleteness of the specifications, and the necessity of having more data upon which to make a satisfactory bid. After Dr. Bain's conversation with Mr. Storey in San Francisco, and the bringing in of Ford, Bacon & Davis to Mr. Storey's office, and the suggesting that these two companies might work together in handling this matter, it occurred to the witness that it would be a good plan if, instead of Mr. Doheny's company handling this through their regular engineering staff, they could make a *contact* with a general engineering firm, and so he took the liberty of suggesting to Mr. Doheny that, having had a previous conversation with Mr. Dunn regarding the matter, he knew that the White Engineering Company [450—366] was interested, and he wrote to Mr. Dunn the above-referred to letter of January 11, 1922, plaintiff's Exhibit 72; he told Mr. Doheny about the J. G. White Company, either the first or second visit to Los Angeles in January. As to what further he did, if anything, about bringing together the representatives of the Pan American Company and Mr. Dunn, he saw Mr. Dunn and Mr. Cotter together, and is not certain but that they met in his office or that perhaps he did introduce them, but he has no recollection on that point.

Dr. Bain was not in Washington on February 17, 1922, but about February 20th there came to his attention the telegrams and letters dated February 17th (Exhibit No. 81), sent by Assistant

(Testimony of H. Foster Bain.)

Secretary Finney to the addressee of Bain's letter of February 15th, and the letter of February 21st, 1922 (Exhibit No. 86) amending Mr. Finney's letter of February 17th, was drafted in Dr. Bain's presence, and as a result of a conversation between the witness and Secretary Finney. As regards how this came about, the witness testifies that the first plan proposed in the February 15th proposals contemplated a contract with cost-plus-fixed-fee basis. That plan he had adopted for the reason that the plans and specifications submitted by the Navy would not permit a lump sum bid at any reasonable price, and that there was not the data there upon which one could make a definite contract bid, to construct, so he proposed the plan shown which contemplated that all the work done under this contract should be done under the advice and direction of the Navy, and in the wording which he put into the proposals, in his judgment, at that time and since, he fully safeguarded the Navy's interests. Witness realized that any contractor would need pay for supervision and correlation, and so he proposed that they should bid a fixed amount in advance as the total of their compensation. It [451—367] seemed to him that he had safeguarded the Navy's interests, and had done the best he could with the plans that were before him. While witness was away, Admiral Gregory wrote a memorandum in protest against any cost-plus contract; based upon his experience, and when witness returned, Admiral Gregory's

(Testimony of H. Foster Bain.)

memorandum and Secretary Finney's letter of February 17th were brought to his attention. In looking over the letter of February 17th, Dr. Bain saw that as it was worded, it would mean that the construction work only went forward as crude oil became available. The consequence would be that there would be inevitably very expensive construction work, because the rate of construction work would vary from time to time, and could not be adequately or accurately foretold. It was going to be a very expensive job in that way, so, on pointing that out, Secretary Finney sent out the letter dated February 21, 1922, (Exhibit 86), which took out of the proposals the phrase, "But not exceeding the value of the royalty oil already delivered." Prior to the sending out of Exhibit 86, and subsequent to the time Dr. Bain became acquainted with the contents of Exhibit 81, and of Admiral Gregory's memorandum of February 14th (Exhibit 79), he talked over the subject with Admiral Robison, Admiral Gregory and Lieutenant Keating of the Navy. After February 21st, and before March 1st, 1922, there being Pearl Harbor plans bearing the latter date, Dr. Bain had conferences or talks with Secretary Fall, and with Admiral Robison, with Secretary Finney, with Mr. Dunn, with Mr. Cotter, with Admiral Gregory, with Lieutenant Keating, and Mr. Ambrose and members of his own staff, and possibly others that he does not now remember, on the subject of the basis on which the proposals were to be received. Mr. Dunn came

(Testimony of H. Foster Bain.)

to see him during that time; he does not remember positively whether Dunn was accompanied by Cotter; they were together in his office frequently, and sometimes each came alone. Mr. Dunn was very much [452—368] disturbed at the second proposal, the February 17th proposal, and in substance told witness that it was very doubtful whether he could advise his client to make a bid on those proposals, because they required a lump-sum bid, when there was not sufficient data to permit such a bid, and that any lump-sum bid made on those proposals would have to be so high, to protect the proposer, that it would be unfair to the Government. At that time, as witness learned from Mr. Dunn, the latter was having conferences with Admiral Gregory and Admiral Robison. Between February 21st and March 1st, the witness went down to Admiral Gregory's office, and met him and some of the officers of his staff, and there was talked over the difficulties involved in the attempt to get a lump-sum bid on the inadequate information given in the proposals. Admiral Gregory said he appreciated the situation fully; he stated that the Bureau of Yards and Docks had a large amount of additional information, and that there was more information that he could get by cable, and that it would be possible to draw new plans and specifications, much more detailed, which in his judgment would permit of a lump-sum bid, and it was agreed between Admiral Gregory and Dr. Bain, and approved by Admiral Robison and

(Testimony of H. Foster Bain.)

Secretary Finney, that new plans and new proposals should be prepared; these plans were prepared and dated March 1st, 1922, and sent to witness' office, and under date of March 7, 1922, the revised proposals were sent out (Exhibit 91, 92).

After invitations for proposals are sent out by Government departments for bids, and while they are pending, and before the bid date, prospective bidders very frequently come to the department to discuss matters pending; there is nothing unusual about that at all that the witness knows of.

Dr. Bain had correspondence with Mr. McLaughlin of the Associated Oil Company prior to sending out on March 7th, as he has testified, of the revised invitations for proposals [453—369] upon the Navy's final specifications; from his office in Washington, under date of March 1, 1922, he wrote to Mr. A. C. McLaughlin, Associated Oil Company, Sharon Building, San Francisco, a letter, which, as Defendants' Exhibit "VV," was read in evidence and is as follows:

DEFENDANTS' EXHIBIT "VV."

My dear Mr. McLaughlin:

I have been trying to get time for some days to write to you. I am afraid you will have been very much confused by the various letters and telegrams that have reached you with reference to the naval storage matter. After the original plan had been approved and sent out the naval officers developed such strong feeling in favor of a lump sum bid that

this Department felt it advisable to suggest changes, as was done. Meanwhile, the Navy has collected a great deal more information than had first seemed possible to get. The detailed plans and specifications are to be made available to us today. Secretary Finney and I plan to start at once on the preparation of the general covering letter which will be sent out from here and which will supersede all earlier communications. This will, of course, come to you. The present plan is while asking for lump sum bids to cover the whole job is not to exclude the possibility of other forms of contract. In preparing a plan somewhat along the lines that you and I had discussed, it had seemed to me that it would be necessary for the protection of whoever took this contract to provide some payment for engineering supervision and correlation. That is why it was written in the original contract that the work might be done by a cost plus fixed fee basis. Undoubtedly it will be possible to sub-contract 75%, and perhaps all of the engineering work, but even so I think it is proper and right that the one who assumes the final responsibility for the whole matter should be in a position to protect himself so far as he might find it desirable to do so by using his own engineers or a general contracting firm. [454—370] In that connection, as you perhaps know, the Standard suggested Ford, Bacon and Davis as a firm with which it would be glad to work, and a similar relationship has been built up between the E. L. Doheny Company and the J. G. White Engineering Corporation. Today the Navy Department

referred to me the Stewart Engineering Corporation of New York, and the President, Mr. Stewart, told me that he understood that you were considering undertaking the work and were at least not known to have formed any such alliance with any general engineering corporation. I confirmed this and suggested to him that if he were interested he might write you direct and present his credentials and his reasons for believing he could be useful to you. He doubtless will do so. I know nothing about this corporation, but will be glad to be of any assistance to you in looking it up, although I assume you have your own channels for doing so that will be more satisfactory.

There are a good many people who hope to be considered on the sub-contracts if not the general work. One of them is the Western Pipe and Steel Company, which you know well and which is especially anxious to handle the tanks. The Hawaiian Dredging Company, Ltd., affiliated with the San Francisco Bridge Company, will be in an especially favorable position to consider the harbor work. If it should develop that the main contract goes to you, I will, of course, be glad to give you additional names of this sort as they come to me.

The matter is really proving a very complex one, mainly, as I see it, because of the insistence of the Navy in getting away from any cost plus basis. Please, however, have patience with us and we will hope to get it in such shape that will warrant you making a proposal along lines likely to be satisfactory. I am writing this personal letter so you

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(Testimony of H. Foster Bain.)

won't think you are in any way losing position by not being here on the [455—371] ground. It is possible that before it is actually closed it may be worth your while for you or someone representing you to come here. If so, I will notify you.

I am very glad the California people have come on to consider specifications, and I understand their conferences have been entirely satisfactory. I think you and I may look with some sense of congratulation on having got that matter started in the right direction.

With best wishes, I am,

Cordially yours,

H. FOSTER BAIN,

Director.

The paragraph in the foregoing exhibit commencing, "I am very glad the California people have come on to consider specifications," has no reference to the Pearl Harbor matter; the rest of the exhibit has.

In reply to the foregoing, the witness received at his office in the Bureau of Mines at Washington, letter dated at the Associated Oil Company's general offices in San Francisco, March 9, 1922, which he identifies, and which, as Defendants' Exhibit "XX," was read in evidence as follows:

DEFENDANTS' EXHIBIT "XX."

My dear Bain:

I have your very interesting letter of March 1st and am very much obliged to you for it. Not be-

ing familiar with the details of how this matter is being worked out in Washington, we are naturally more or less perplexed at this end.

There are several factors which seem to me to be of importance. In the first place, if lump sum bids for construction of the facilities and filling of the tanks are made by the oil companies, there will be introduced a very difficult factor for us to deal with in that we will be asked to bid on something which is entirely out of our line. It is true, [456—372] of course, that we can work with some engineering firm, but as I see it, our bid will then resolve itself into their bid. Again, there may be differences arise as between the Navy and the contractor for which we would be responsible and would be placed between the Navy and the contractor where we would surely be the "goat." You realize, of course, that in placing a bid to perform under these conditions, we would have to take into consideration all of these possible contingencies which would naturally increase the cost of the work to the Government.

Again, the inclusion of royalty oil from Reserve No. 1, as well as from Reserve No. 2, means that the successful bidder will have to duplicate the gathering facilities and the main line facilities of the Standard Oil Company which is the only Company now taking oil in quantity from that Reserve. It is true that we have a short six inch line from Reserve No. 1 which connects with the Union Oil Company's main line near Shale, but I do not believe that this line would be adequate to handle the situation, not only because of its limited capacity, but

also because it ends nowhere. These facts being well known would naturally result either in the addition to the bid of the cost of these facilities, or the Standard Oil Company getting the business. Since production in Reserve No. 1 is on the wane, I believe that to duplicate the Standard Oil Company's facilities in that area would be an economic waste.

The point that I am particularly anxious to bring out is that this proposal naturally resolves itself into two parts, (first) a bid to be made by an Engineering Company for construction of certain definite specified facilities, and (second) a bid by an Oil Company on the purchase of certain amounts of Government royalty and the sale to the Government of a certain amount of fuel oil delivered into facilities at Pearl Harbor. I cannot help but feel that the Government would save money [457—373] and at the same time obtain better results by keeping these two proposals entirely separate and distinct. This, of course, would be done by dealing with an Engineering firm in the one case and with an Oil Company in the other. The reason I believe the Government will save money is that an Oil Company, in my judgment, can make a closer figure in dealing only with the proposal that involves the factors which are well known and familiar to us. The minute we begin dealing with unknown and unfamiliar factors, it is necessary for us to make liberal allowances for any unforeseen contingencies which may arise.

(Testimony of H. Foster Bain.)

I shall be very glad to go to Washington and discuss this matter if I can be of any service.

Yours very truly,

A. C. McLAUGHLIN.

The witness replied to the foregoing by letter dated Washington, March 23, 1922, addressed to A. C. McLaughlin, Associated Oil Company, San Francisco, which letter he identifies, and the same is read in evidence as Defendant's Exhibit "YY," and is as follows:

DEFENDANTS' EXHIBIT "YY."

My dear McLaughlin:

I have hesitated to adopt the suggestion in your letter of March ninth relative to asking you to come on here and discuss the proposed oil exchange. It may be that before the matter is closed it will seem worth while to send you a telegram, and this is by way of warning.

I realize the difficulties you suggest in your letter, and I believe a telegram has already been sent to you indicating that you can, if you choose, bid on the basis of only the oil from No. 2, and with the idea of doing nothing but handling the exchange and the filling of the tanks. This will be all the easier since the Foundation Company is preparing to make [458—374] a separate and distinct bid on the provision of the tanks and storage facilities. It is possible that a similar bid will be made by Ford, Bacon and Davis. You might check this information at the San Francisco offices of these

companies. If I find any other company is likely to make such a separate bid I will let you know. I happen to know that at least one bid will be made covering the whole project by a responsible company, but it is entirely possible that a combination of two separate bids will prove to be better.

As I understand it, you are primarily interested in getting hold of the oil from reserve No. 2. It is entirely possible that even if some one else gets the contract you can purchase this oil, though if you deal indirectly this way the chances are the Government would not get quite the same benefit as if the exchange is made directly with you.

I sincerely hope it may prove feasible for you to make a proposal. I am sorry the matter has been so much delayed. This was necessary in view of the insistence that opportunity be given for getting data in Honolulu necessary to making a lump sum bid. I am very anxious that the delay shall not lead to the matter being discussed, at least publicly, since a complicated thing like this is much better presented as a definite accomplishment than as a project.

I had a very pleasant little visit with Mr. Shoup when he was here, and I look forward to having one with you either here or in California before long.

Cordially yours,

H. FOSTER BAIN, Director.

Thereupon counsel for plaintiff produced and the defendants offered in evidence telegram dated Washington, March 30, 1922, signed by H. Foster Bain,

(Testimony of H. Foster Bain.)

Director, to A. C. McLaughlin, [459—375] Associated Oil Company, San Francisco, California, and reading (Defendants' Exhibit "ZZ"):

DEFENDANTS' EXHIBIT "ZZ."

Desirable you come Washington at once concerning oil exchange. Please wire date expected arrival Important.

BAIN.

Counsel for the Government also produced and there was offered in evidence as Defendants' Exhibit "AAA," telegram dated San Francisco, California, March 31, 1922, addressed Dr. H. Foster Bain, Bureau of Mines, Washington, D. C., which was read as follows:

DEFENDANTS' EXHIBIT "AAA."

Your telegram planning to leave San Francisco next Thursday arriving Washington Monday.

A. C. McLAUGHLIN.

Referring to Plaintiff's Exhibit 95, signed Charles M. Black, the witness testifies that is the Col. Black of Ford, Bacon & Davis, who he met in San Francisco in January, 1922; when he received that letter, dated March 3, 1922, he sent the two sets of blueprints and specifications therein requested to Col. Black, under cover of Exhibit 96.

During the period which elapsed prior to the opening of the bids, the witness received from the Navy a list of persons and companies recommended for consideration for sub-contracting work, and he

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(Testimony of H. Foster Bain.)

sent copies of that list to each of the companies that had been asked to make proposals, doing this under cover of identical letter dated March 7, 1922, addressed to the White Engineering Company, the Standard Oil Company, the Associated Oil Company, Ford, Bacon & Davis, and the Pan American Company, one of which letters is Defendants' Exhibit "WW," and was read in evidence, and reads as follows: [460—376]

DEFENDANTS' EXHIBIT "WW."

Dear Sir:

The firms listed on the accompanying sheet have been suggested by the officers of the Navy Department as among those which might probably be asked to bid on sub-contracts in connection with the Navy Oil Exchange. The four marked with a cross have asked me to see that they have such opportunity and I undertook to see that their request should be laid before those to whom the proposals were sent.

You will doubtless recognize in the list the names of a number of strong and experienced concerns. The Western Pipe and Steel, Pittsburg Des Moines, and U. S. Steel Products have, to my personal knowledge, had good experience in building oil tanks. I shall be glad to be of any assistance possible in looking up these or any other firms applying to you in connection with this matter.

Cordially yours,

H. FOSTER BAIN,

Director.

(Testimony of H. Foster Bain.)

Enclosure No. 74305, which was sent out with the foregoing exhibit, consisted of a list of names as follows:

Charles C. Moore and Co., Sheldon Bldg., San Francisco, Cal.; Triest Contracting Corporation, 126 East 59th St., New York, N. Y.; Hawaiian Contracting Co., 1005 Wells Fargo Building, San Francisco, Cal.; The Frederick Snare Corporation, 8 West 40th St., New York, N. Y.; Puget Sound Bridge and Dredging Co., Seattle, Washington; Union Construction Co., 351 California St., San Francisco, Cal.; F. W. Lord Construction Co., 105 West 40th St., New York, N. Y.; John E. Danforth Co., 70 Ellicott St., Buffalo, N. Y.; Stewart Engineering Corporation, 186 5th Avenue, New York, N. Y.; U. S. Steel Products Co., George W. Kirkley, Agt., Wilkins Bldg., [460½—377] Washington, D. C.; Pittsburgh Des Moines Steel Co., Curry Building, Pittsburgh, Pa.; Chicago Bridge and Iron Co., 105th and Throop Sts., Chicago, Ill.; McClintic-Marshall Co., Pittsburgh, Pa.; Reter-Conley, Pittsburgh, Pa.; American Bridge Company, 30 Church St., New York, N. Y.; Western Pipe and Steel Co., San Francisco, Cal., Frederick Thompson, Agt., Willard Hotel, Washington, D. C.

In the foregoing list, a cross-mark appears alongside of four names, and the witness testified that is the cross-mark he made reference to in his above quoted letter of March 7, 1922. The clause providing for alternate proposals in the invitation for bids sent out under date of March 7 was composed by

(Testimony of H. Foster Bain.)

the witness and Secretary Finney worked with him in composing it, and no one else did, that he knows of. He does not recall any talk with the Navy officials about it. He does not recall anybody from the Pan American Company asking that that request for alternate proposals be included in that invitation. Mr. Dunn did bring out to witness the importance of making some form of proposal which would permit the widest possible bidding, and it was on that account, and also in accordance with Dr. Bain's own judgment, that in making the proposals of March 7, Secretary Finney and the witness included the clause referred to. As regards the suggestion which Mr. Dunn made, which he said he considered would allow the widest possible bidding, it was that there were still unknown features as described in the more detailed plans which the Navy had given, and that it might be impossible within the time limit, or inadvisable in any event, to attempt to make any lump sum bid covering every item, and in accordance with that, there was left the opening for an alternate proposal. Neither Mr. Dunn nor anybody for the Pan American Company submitted to the witness, or to his knowledge, a form of alternate proposal invitation. [461—378]

The occasion for the sending by the witness of his telegram of March 30th, 1922, Exhibit "ZZ," to Mr. McLaughlin, was that there were a great many inquiries at Dr. Bain's office from various contracting firms with regard to this project, and a certain amount of information about it became cur-

(Testimony of H. Foster Bain.)

rent in engineering circles, through inquiries being made by sub-contractors; among the critical problems in this contract was that with regard to the harbor work, and there was one firm, the Hawaiian Dredging Company, that was better prepared than any of the others to take up that work, because of having equipment on the ground; about this time, Mr. Dillingham, who was a responsible official of that company, had been in Washington, and witness had talked with him; it seemed to witness that it was desirable for Mr. McLaughlin to get in contact with all of these people, and have the best possible chance to bid; it had come to Dr. Bain's attention by that time that the Hawaiian Dredging Company, by reason of its location, and experience in Hawaii, was in better position than any other company to sub-contract for that part of the work, and he knew that that company was in contact with Mr. Dunn of the White Company, having been so told by Mr. Dillingham and Mr. Dunn.

Sometime in March, 1922, a representative of the Chicago Bridge & Iron Company called on the witness; this representative came in and said that he understood that the Department of the Interior was taking bids on the construction of tanks for the Navy at Pearl Harbor, and that his firm was an experienced firm, and would like to have an opportunity to bid on the contract; Dr. Bain told him that the contract would be made under the terms of the law which provided for payment in crude oil, an exchange arrangement, and that proposals were being

(Testimony of H. Foster Bain.)

asked, therefore, from oil companies or engineering companies that had made arrangements to work with oil companies [462—379] on such contracts. The witness further told the Chicago Bridge & Iron Company's representative that the name of his company had already been given to each proposer, or each person who had been asked to propose, as a concern which might be considered for subcontracts on the tanks; he went away apparently satisfied; referring to the correspondence of the 11th and 12th of April to the Department of the Chicago Bridge & Iron Company, and to the reference therein made, the communication on that subject to Senators William B. McKinley and Medill McCormick, Senators from the State of Illinois, the witness knew them, and wrote to them under date of April 12th and 14th, respectively, letters which, as Defendants' Exhibits "BBB" and "CCC," were thereupon introduced in evidence and read as follows:

DEFENDANTS' EXHIBIT "BBB."

Department of the Interior,

Bureau of Mines.

April 12, 1922.

Hon. William B. McKinley,

United States Senate.

My dear Senator: In response to the request made today by your secretary, I am sending you the following information relative to the contemplated construction of naval oil storage tanks:

Investigations made by this bureau brought out

the fact that the Government was suffering a considerable loss of oil in the two California naval Petroleum through decreased gas pressure and drainage of oil. This necessitated the adoption of a policy by the Interior Department of drilling these fields and storing the oil for the future needs of the Navy at such a place as the Navy would direct. Honolulu was selected by the Navy.

The program outlined by the Interior Department calls for the erection of storage tanks at Honolulu filled with a specified amount of fuel oil, in return for which there would be [463—380] exchanged a certain amount of crude oil from the California fields. In asking for bids under this program, the only companies with which the Interior Department could deal were those which are in a position to accept crude oil in exchange. Bids were asked on the basis that the bids would be made in number of barrels of crude oil in exchange, not money in payment. Plans and specifications were sent only to those companies which would state their intention of bidding on the entire project and on the basis stated above. It was realized that this construction work would involve considerable engineering work which one company might not be able to handle, and it was provided, therefore, that these portions of the work could be done by subcontract let by the major bidder, but the concern which bid direct to the Government would be held responsible. There was prepared a list of engineering concerns with which the Navy Department had been in con-

tact and for whom they had done satisfactory work. This list was sent as a suggested list of subcontractors to the concerns which signified their intention of bidding on the entire project. The Chicago Bridge & Iron Co., for which your inquiry was made, was on this list.

When the representative of the Chicago Bridge & Iron Co. called at this office he was given a list of all concerns, which, it was expected, would submit an entire bid and it was suggested that he get in touch with any or all of them.

Had the Chicago Bridge & Iron Co. been in a position to bid on the entire project and accept oil in exchange, I would have been more than glad to have given their representative a set of plans and specifications. Naturally, when they could not do this, I could not let them have a set of plans, as it would not have been proper to let them have the plans when they could not bid. Incidentally, this action was not taken [464—381] particularly against the Chicago Bridge & Iron Co. In each instance, where a firm was interested in a portion of the contract, the representative of the firm was given the list of concerns which had signified an intention of bidding on the entire project and it was suggested that they communicate with these firms with reference to the portions of the work which would be done by subcontract.

I trust that the above will enable you to inform the Chicago Bridge & Iron Co. that this matter was

handled without discrimination against any individual concern.

Sincerely yours,

H. FOSTER BAIN,

Director.

DEFENDANTS' EXHIBIT "CCC."

Department of the Interior,

Bureau of Mines.

April 14, 1922.

Hon. Medill McCormick,

United States Senate,

Washington, D. C.

My dear Senator: I hand you with this telegraphic correspondence between the Chicago Bridge & Iron Works and Secretary Fall, with a memorandum that the Secretary gave me.

I think that when the Chicago Bridge & Iron Works understand the situation they will be satisfied. This department on behalf of the Navy plans to let contracts and make arrangements whereby the naval reserves would be protected by drainage through private lands. Part of this policy involves the taking of the crude oil in the field, which is not itself available for naval use, and exchanging it for fuel oil, which suffers very little indeed from evaporation, and placing that in steel tanks as a reserve for the Navy. This has seemed to both departments to be the best way to carry out the intention of Congress that the lands should furnish a reserve of oil for naval use. Since no specific

(Testimony of H. Foster Bain.)

appropriation had been made for building the tanks, our exchange arrangements cover the trading of oil in the field for fuel oil in tanks, and [465—382] incident to this the oil companies with which the departments have been negotiating have in turn been asking for bids from various companies. The plans and specifications have been furnished to no construction companies, except those that were acting in immediate co-operation with the particular oil companies proposing to assume the responsibility for the exchange. I did, however, furnish to each of these companies a list of various responsible engineering and construction firms that had done good work for the Government and whose work both to the Interior and Navy would be satisfactory. In that list was the name of the Chicago Bridge & Iron Works. This was done approximately six weeks ago, so that so far as I could do so I endeavored to secure for that firm a part in the business. The department is not itself taking bids on these subcontracts.

Trusting that this will clear up the situation, and thanking you very much for taking it up with the department promptly, I am,

Cordially yours,

H. FOSTER BAIN,

Director.

After invitations were sent out under date of March 7, 1922, and prior to the receipt of bids, Mr. Dunn and Mr. Cotter talked to the witness regarding the necessity for an alternate proposal. He

(Testimony of H. Foster Bain.)

cannot discriminate now between conversations before and after March 7; he had no talk with Cotter before the bids were opened, as regards what sort of a bid the Pan American was going to put in, except that Cotter told him that they would put in a lump sum bid, and an alternate one.

Following the exchange of telegrams between the witness and Mr. McLaughlin of the Associated Company, dated March 30 and 31, and prior to April 15, Mr. McLaughlin came to Washington and saw the witness; Mr. McLaughlin arrived there within two weeks—it may have been within a week—of the opening [466—383] of the bids, and stayed there until after the bids were put in and he was formulating his bid in final shape during that time; and he asked Dr. Bain about the interpretation of various points, and the witness gave Mr. McLaughlin, to the best of his ability, what he thought would be the interpretation of the Department on things. The witness does not recall a meeting at his office at which Cotter of the Pan American, McLaughlin of the Associated, Ambrose and himself were present, when the formula for the exchange of crude for fuel oil was discussed; he does not recall that they were ever all together at one time; he recalls conversations with each of them, and by groups; that was one of the considerable difficulties that had to be worked out, the fact that we wanted to provide for an adjustment of the proposal sum to correspond to changes in price of crude, in price of fuel, and to correspond to the

(Testimony of H. Foster Bain.)

differences in the grade of crude which might be delivered. The question of the working out of a basis or formula to carry into effect what the witness has just suggested, was gone over with both Mr. McLaughlin and Mr. Cotter.

As already stated, a number of representatives of different construction and engineering companies came to Dr. Bain's office, and asked for plans and specifications, with a view of making bids; among these was the Foundation Company, which is a large engineering concern, which builds all kinds of structures in various parts of the country; one of their representatives came to the office of the witness, and asked for plans and specifications with a view to bidding. Dr. Bain told him exactly what he told the Chicago Bridge & Iron people, that we could only give him the plans and specifications if he was prepared to take pay in crude oil. He went away and came back after a day or two, and said that they would be prepared to make a bid on that basis. Witness does not remember what phrases were used, but he was given to understand that [467—384] the Standard Oil Company would be prepared to take the oil off of the hands of the Foundation Company, and on that basis gave the representative of the Foundation Company a set of plans, and expected a bid from that concern, and the first time he learned that the Foundation Company would not submit a bid was when the bids were actually opened in the Secretary's office. Exactly the same thing took place with the Pittsburgh & Des Moines

(Testimony of H. Foster Bain.)

Steel Company, as with the Foundation Company, and the witness expected a bid from the Pittsburgh & Des Moines Steel Company until the moment of the opening of the bids; a representative of the last-named company was present at the time the bids were opened. When, as shown by the minutes of the opening, Acting Secretary Finney announced that if any bids were in the Department that were not in his desk, and that subsequently it came to his desk after the hour of opening they would be considered, the making of which statement the witness recalls, nothing was said at that time by the representative of the Pittsburgh & Des Moines Company then present, about a bid from that company.

Prior to April 13, 1922, the witness received information to the effect that Ford, Bacon & Davis, who, as he has testified, were first brought into the matter by the executive of the Standard Oil Company at San Francisco, were figuring with the Associated Oil Company; Col. Black came to Dr. Bain's office two or three times during this discussion; on one occasion, he told the witness that following Mr. Sutro's opinion, the Standard Oil Company would not make a bid on the construction work; at another time, Mr. McLaughlin told the witness that he had made an arrangement with Ford, Bacon & Davis to make a bid in connection with the Associated Oil Company, instead of using his own engineering department as had been originally contemplated.

Secretary Fall left Washington for Three Rivers,

(Testimony of H. Foster Bain.)

[468—385] New Mexico, April 13, 1922; some days before that he asked witness how they were getting along on the Pearl Harbor project, and stated that he had nearly completed the negotiations with the Mammoth Oil Company, which resulted in the lease of Naval Reserve No. 3. When Dr. Bain told Mr. Fall that nothing more could be done until after April 15th, he said, "Well what have you been doing all this time, and why can't you?" Dr. Bain told him that after the change in the proposals of February 15, and the determination that no bids would be accepted except on a lump sum basis, that it had been necessary to get out additional plans and details, which took some time, and to send out new proposals, and that since this placed on the contractor a very large responsibility, it was necessary to allow the contractor time to visit Hawaii or to have it visited, to determine the matters of foundations, sites, materials, labor, and things of that sort, before he could make a bid, and that accordingly the date for the receipt of those bids had been put forward to April 15. This apparently was the first time that Secretary Fall realized that the change in the original proposals involved material delay, and he expressed impatience over this. He asked witness whether there was not some way to facilitate action. He asked witness who was going to bid, and was told, to the best of Dr. Bain's knowledge, who would bid. Dr. Bain told the Secretary the Pan American, the Associated, and the Standard would bid, and that the Foundation Company and the Pittsburgh

(Testimony of H. Foster Bain.)

& Des Moines Steel Company would probably bid on parts of the work; he also told the Secretary about the connection that it was expected the engineering companies and oil companies would have; up to that time, the witness knew, not only that the White Engineering Company would bid in connection with the Pan American Company, but that Ford, Bacon & Davis would bid in connection with the Associated, and he told the Secretary that; he told the Secretary [469—386] what he had understood from the representatives of the Foundation Company; as respects an arrangement with the Standard Oil, the witness cannot state positively that the Foundation Company's representative told him that he had made an arrangement with the Standard Oil Company, but that representative said something which gave witness that impression.

In the letter of March 9th, 1922, from Mr. McLaughlin to the witness (Exhibit "XX"), the writer discusses this situation as to an engineering company taking one part and an oil company another part, and in this conversation had just before April 12, with Secretary Fall, the witness told the Secretary that. In several conversations, going clear back to October, Secretary Fall had said in substance that if the Government could sell the oil and pay the money direct to the construction company, it would be simpler business and probably more economical; in this conversation in April, witness showed the Secretary Mr. McLaughlin's letter, and this subject was recalled. Witness knew of the let-

(Testimony of H. Foster Bain.)

ter dated April 12, 1922 (Exhibit No. 102), from Secretary Fall to the Secretary of the Navy, at the time it went out; he cannot remember positively whether it was dictated in his presence, or whether it followed his being in the Secretary's office, and the latter showing the letter immediately afterwards to him; referring to the legislation recommended in that letter, and the statement that contracts were being delayed in one way or another in order to give opportunity for this legislation, witness testifies that he had talked to the Secretary about delays in the things he has just mentioned, and the necessity of getting information from Hawaii, and also suggested that it was entirely possible that satisfactory bids might not be received on account of these various circumstances, including the legal doubt which had been expressed by some lawyers as to the possibility of acting in the [470—387] form called for by the proposals, the possibility or probability of having proposed legislation enacted was discussed by the Secretary with the witness; that is, Mr. Fall drafted that memorandum in the letter of April 12th, and read it to Dr. Bain, either from the letter or from a previous memorandum, witness does not recall which, and said he had not a doubt in the world that if Secretary Denby would send that to Congress that he could get that authority. Prior to the time Secretary Fall left Washington on April 13, 1922, he instructed Secretary Finney to receive and open the bids, that were to be received on April 15, and instructed the Bureau of Mines to co-operate

(Testimony of H. Foster Bain.)

with Secretary Finney in the study of those bids. Witness was present when the bids were opened on April 15, 1922. He recalls that there were also present Secretary Finney, the secretary of Mr. McLaughlin, though he does not remember his name; a Pittsburgh & Des Moines Steel Company man; Mr. Cotter of the Pan American Company; and the others whom the record will show; a stenographer was present recording the proceedings.

After the bids had been opened, and the representatives of the bidders had withdrawn, the witness and Secretary Finney had a conversation, Mr. Ambrose also being present, and there was a discussion of the bids and the fact that on the face of them, the Pan American bid B was the better bid, and the fact that the bids, both of the Pan American and of the Associated Oil Company, referred to extra piles and extra lengths of piles, would require consideration, and the fact that the Associated Oil Company bid, giving under guise of interpretation really a change in specifications, would need to be referred to the Navy to see if it was satisfactory before a decision could be made as to the bids; Secretary Finney turned the bids over to the Bureau of Mines, handing them to [471—388] either the witness or Mr. Ambrose, who were together; the instructions given by Secretary Finney at the time to Ambrose and witness was "find out about these bids and report." No instructions whatever were given to Dr. Bain at that time or at any time prior as to what the report should be, and no instructions what-

(Testimony of H. Foster Bain.)

ever that he knows of, of that kind, were ever given to Mr. Ambrose; the only instructions that the witness gave to Ambrose as to how he should consider the bids and what he should report was that he should find out from the Navy about those technical details; witness certainly did not give Ambrose any instructions with regard to whose bid he should recommend, and Secretary Finney did not give any such instructions to his knowledge, or in his presence, nor did anyone else to the witness' knowledge.

Upon leaving Secretary Finney's office, which is on the fifth floor of the Interior Department Building, the witness and Ambrose went to the office of the Director of the Bureau of Mines, on the second floor, and that afternoon, which was Saturday afternoon, and the next day, Sunday, those bids were studied by Mr. Ambrose, Mr. F. B. Tough, chief supervisor of oil leasing, someone else in Mr. Ambrose's division, whose name the witness does not now remember, and they had Lieutenant Keating, and he took up with someone in the Navy and reported back to Mr. Ambrose that those technical details of engineering were satisfactory; they apparently had a considerable discussion over the ratio which was worked out, and the form of the statement of the ratio to govern the exchange of oil, the ratio as stated by the Pan American bid was in different form from that of the Associated bid, and it was the testing of those formulas that occupied a considerable amount of time.

Dr. Bain left Washington for Pittsburgh, Sunday

(Testimony of H. Foster Bain.)

night, April 16, being absent just one day, and returned directly to Washington, where he arrived again the morning of April 18th. [472—389] He did not communicate on April 15th or 16th in any way with Secretary Fall, nor did the Secretary communicate with him. Prior to leaving Washington on Sunday night, April 16th, the report giving the analysis of the bids had not been drafted; the witness' recollection now is that the conclusion which would have to be drawn was fairly obvious, and that the Pan American bid B was the beter bid, provided that the request for a preferential lease could be properly defined and was satisfactory to the Department. The witness talked with Ambrose on that; he cannot be positive whether Ambrose expressed to him before he left Sunday night the conclusions he had reached, that is, in any degree of completeness. With regard to certain points, he had; after the bids were opened, witness talked with Admiral Robison on the telephone, and in a general way outlined to the Admiral the number of bids that had come in, and what they seemed to show; this conversation was before any recommendation had been made. Witness saw the paper headed "Memorandum to Secretary Finney," dated April 17, 1922, and signed "A. W. Ambrose" (Exhibit No. 119), on Tuesday, April 18th, after he returned from Pittsburgh, and discussed it with Secretary Finney; Mr. Finney had read the report, and felt that the matter should be referred to Secretary Fall, and witness agreed with him; Mr. Finney made witness

(Testimony of H. Foster Bain.)

acquainted with the contents of telegram to Secretary Fall, and Secretary Finney read the contents of Secretary Fall's reply, dated April 18. Witness cannot state positively that he saw Admiral Robison on the 18th or 19th of April; he was seeing him constantly, very frequently, but he cannot say positively he saw him on a definite day. Without regard, however, to specific dates, he was in conference with Admiral Robison subsequent to the time the bids were opened, and before the [473—390] draft of the contract was complete. These conferences amounted to making arrangements for drafting the contract in accordance with the recommendations and the approval which had by that time been received in Secretary Fall's telegram of April 18 (Exhibit 121). During this period of time, the witness saw Admiral Robison in witness' office. Mr. Williamson, a lawyer in the Department, assigned to the task by Secretary Finney, did the legal work of the drafting of the contract. It had been drafted on or about April 19th; when that draft of the contract was in process or had been gotten up, witness was present at a conversation which took place in Secretary Finney's office, when Mr. Cotter stated in substance that he felt it was very important that the Secretary of the Navy's signature should go on the contract as a direct party to it; witness took no part in that conversation, as it was a legal matter upon which his opinion was worth nothing; Secretary Finney said in substance that he agreed with Mr. Cotter; the matter was taken up with Secretary

(Testimony of H. Foster Bain.)

Fall by telegram; witness was aware of Secretary Fall's reply on the subject; it is the best recollection of the witness that while this thing was in process, Admiral Robison told him that the matter had received the approval of the Secretary of Navy; that is not a clear recollection, that is his best recollection at the moment.

During this period, in the witness' office, Mr. Cotter had stated that unless Secretary Denby were made a direct party to the contract, and unless there was some arrangement made for leasing a definite part of the reserve to the company, that he was not prepared to take up and recommend to his company proposal B, or the acceptance of the contract based on proposal B, and that he would prefer to have proposal A accepted; this was stated by Mr. Cotter between the time the bids were opened and the final signing of the contract, after one draft [474—391] had been made, but was under revision. With respect to some definite assurance in regard to some lease under the preferential right clause, Mr. Cotter in substance said that he had put in a good deal of work on this, and would have nothing to show to his company for his accomplishment unless he could show at least some leases that he had acquired.

Mr. Tough of the Bureau worked with Mr. Ambrose, as did someone else in the Bureau, in connection with this matter, in addition to what Lieutenant Keating did while the bids were being considered. Mr. Tough was at the time in charge of the leasing work of the Bureau on the oil and

(Testimony of H. Foster Bain.)

gas lands; he is now chief petroleum engineer, in the Bureau of Mines, and by reason of that position, the chief of the petroleum division of that Bureau, and the present head thereof.

After Mr. Cotter had made known his decision, with regard to Secretary Denby's becoming a part of the contract, and Secretary Fall's telegram, as witness already testified, arrangements were made to send Mr. Ambrose to Three Rivers to explain this, and other points, such, for example, as the highly complicated looking formula by which the ratio of exchange was to be governed; the definition of the preferential rights to lease; the particular areas which it was proposed to lease, and various technical matters in connection with the contract; the discussion, in effect, was that Secretary Fall, being far away and being a lawyer rather than a petroleum engineer, might like to have not only direct information as to what had taken place, but someone there that he could advise with in case he saw any reason to disapprove. Mr. Ambrose went West. After Mr. Cotter brought up the question with regard to getting some definite assurance of future leases in the reserve by virtue of the preferential right clause, the Bureau of Mines pointed out to Secretary Finney the particular tracts which could be properly leased, and [475—392] which would "in our judgment" need to be leased some time within not to exceed a year, pointing out the northeast quarter of Section 3 in the east part of the reserve, and the western

(Testimony of H. Foster Bain.)

portion of the eastern half of Section 34; Mr. Ambrose and the witness talked to Secretary Finney on that subject, and told him in substance that these were areas that were subject to drainage by decrease of gas pressure at the time, and it would shortly be subject to drainage by loss of oil; that it would be necessary to put them into production, and that we could see no objection to making that a part of the bargain at this time; as to what, if anything, Mr. Cotter or any other representative of the Pan American Company had to do with the selection of those two pieces of land, Mr. Cotter expressed approval, but he did not pick them out; he was told that they were picked out some time before the letter in record, April 25, 1922 (Exhibit "E" to Amended Bill of Complaint), was drafted; the royalties stated in that letter were arrived at by the Bureau of Mines on the basis of experience in leasing adjacent tracts of ground; as the witness remembers it, Mr. Cotter asked for the Interior Department regulation royalties, in response to which he was told that those tracts would not be leased on any such royalty; the petroleum division of the Bureau of Mines got up the schedule of royalties that appears in the letter signed by Mr. Finney and Mr. Denby, dated April 25. As to why the subject of that letter was not included in the body of the April 25 contract itself, that was because the contract was already drafted, and substantially complete, and this was an action which was to take place within a year

(Testimony of H. Foster Bain.)

rather than at the time. When Mr. Cotter was discussing his desire for definite assurance of future leasing, he said that the preferential right clause, as it was proposed to put it in the [476—393] contract, did not give his company anything; that clause, as it appears in the April 25th, 1922, contract, was drafted in the petroleum division of the Bureau of Mines.

Subsequent to the execution of the April 25, 1922, contract, the witness visited San Francisco, being there in May, 1922; while in San Francisco, he made arrangements so far as he could for the turning over to the Pan American Company of the accumulated oils previously arranged for on exchange contract; he encountered questions in that connection raised by Mr. Storey of the Standard Oil; at about this time, the middle of May, Mr. Cotter was in San Francisco, and in the Bureau of Mines Office in that city, Cotter and the witness had a conversation on this subject. There was a question raised by the Standard as to whether they would turn over to the Pan American Company, as a representative of the Government, the oils which had been accumulated since the first of November; witness was on his way to Alaska, and could not stay to clear the whole matter up; he suggested by telegrams to Washington, that Mr. Campbell, who was the Government's resident engineer, be made the representative of the Government for this purpose; that the companies turn over the oil to Mr. Campbell, and he turn them over then to the contractor under

(Testimony of H. Foster Bain.)

this contract; witness had to leave that as unfinished business in the hands of Mr. Ambrose, to whom, from San Francisco, under date of March 11, 1922, witness wrote a letter, which was thereupon offered in evidence as Defendants' Exhibit "DDD," and which, in so far as it relates to matters referred to in his testimony, reads as follows:

DEFENDANTS' EXHIBIT "DDD."

"The authority of Campbell therefore to give receipts for the oil and to supervise the gaging should be made perfectly clear and definite."

It is all the more important that the record should be [477—394] made good here since there is serious disposition to question the right of the Department to make the Pan American contract. Indeed, I understand that a proposal was considered to have one of the smaller companies bring a test suit in the District of Columbia to determine the Secretary's right. Mr. Storey and others negative this proposal since it was thought that a suit of this kind now would be used by those who are criticising the Department and simply make trouble. At the same time, the lawyers have taken such a technical attitude with regard to the contract that Mr. Storey, at least, is going to find it difficult to buy the oil from the Pan American, and it would make it hard for the latter to handle the situation. Mr. Cotter will work out a detailed plan of operation and you will of course know the details later. It is apparently going to be important to show de-

(Testimony of H. Foster Bain.)

livery by lessees to or through a properly accredited representative of the Government. We are to have a conference tomorrow morning with McLaughlin and if anything develops I will let you know.

Cordially yours,
(Signed) H. FOSTER BAIN."

On May 12, 1922, in the office of the Bureau of Mines in the Custom House, San Francisco, witness wrote a letter, the original of which he gave to Mr. Cotter, and a carbon of which he sent to Mr. Ambrose at Washington, and which, as Defendants' Exhibit "EEE," was offered in evidence and reads as follows:

DEFENDANTS' EXHIBIT "EEE."

Hon. Albert B. Fall,
Three Rivers, N. Mex.

Dear Mr. Secretary:

I have been here for the last few days arranging for a transfer of the accumulated royalty oil and future royalty oils to the Pan American Co. I have been surprised to find that the Standard and General Petroleum in particular are adopting a very technical attitude toward this transfer, going so far [478—395] as to raise a question as to whether either company would be safe in making such a transfer or in later handling any of the oil in case the Pan American desired to have them do so. As you will recall Mr. Sutro and Mr. Wyle have been doubtful as to the right of the depart-

ment to make the exchange contract. They now seem to have become positive that no such right exists and Mr. Storey is even interpreting the law so far as to question the right of the Standard to deliver oil to the Pan American on our order. I have arranged that Mr. Campbell, as representing the department, shall receive the oil and give a receipt for it, and while I am not a lawyer, my impression is that that should end the matter as far as the pipe-line companies are concerned. Of course, this is not a matter which primarily concerns the department since we have all been entirely clear in our minds as to the right of the Government to make this exchange and have in fact gone ahead and contracted for the exchange with the Pan American, and the latter is an entirely responsible concern that I assume ends it as far as we are concerned.

There is, however, another phase to it. None of us want Mr. Doheny to get into trouble, and I take it we will want to do anything we can to make it easy for him. I have been told that there was a definite proposal to have one of the smaller oil companies go into court and fight this contract with a view to getting a decision as to the right of the department to make such a bargain. This proposal was not carried through. Mr. Storey tells me that he objected to it, as he felt that it would embarrass the department and would give support to the trouble makers in Congress. He professes to be anxious and willing to do anything he can to

(Testimony of H. Foster Bain.)

help the department to carry out its plans, but to be in the awkward position of having an [479—396] opinion from his attorney which might be quoted against him in case the matter ever came up.

Out of all this has come the suggestion repeatedly that the opinion of the Attorney General be obtained as to the legality of the contract. I realize the objections to asking such an opinion, but I have thought it proper to let you know the difficulties that are being raised here so that you might reconsider the matter and decide as to whether you might not properly ask the Attorney General to put in writing what I have understood was his informal and verbal expression of opinion favorable to the action the department has taken. I am not certain that Mr. Doheny cares, but Mr. Cotter will see him tomorrow, and if it does seem to them important I am giving Mr. Cotter this letter to show you, so that you may know what I have found out here.

The wells on the north line of 2 are coming in in good shape, and Anderson has done excellent work in pushing them ahead.

I am sorry to bother you with this business while you are at home.

Cordially yours,

H. FOSTER BAIN,

Director.

This letter was not mailed, but was given by the witness to Mr. Cotter; he never received a reply from Mr. Fall, nor did Mr. Fall ever speak of the letter, and Mr. Cotter subsequently informed Dr.

(Testimony of H. Foster Bain.)

Bain that the letter was not sent to Mr. Fall; Cotter said he talked the matter over with Mr. Doheny, and that Mr. Doheny said it was unimportant; that he was satisfied with the authority to go ahead, and so Cotter did not deliver the May 12 letter to Secretary Fall; at the time that letter was written, there was not, so far as the witness knew, [480—397] pending any additional contracts to be made with the Pan American Company, or any company that Mr. Doheny had any interest in; when he referred in that letter to not making trouble, or not having trouble made for Mr. Doheny, or, to use his own language, "to do anything we can to make it easy for him," he had reference to the fact that under the contract, Mr. Doheny became a partner of the Government in carrying out an enterprise, and he wished to make it as easy to carry out the contract as possible, and to get the work done that the Navy wanted done; he used the personal name, Mr. Doheny, in referring "to his company, certainly." The objections referred to in that letter to submitting the matter formally to the Attorney General were, first, "the fact that the Department, having gone ahead and made the contract, to then ask for a legal opinion to fortify its action, would throw doubt on its own confidence in its judgment in making such a contract, and, second, was the fact that whenever you ask a lawyer for an opinion, you may get into the hands of a lawyer who is thinking only of strictly technical legal matters, and who gives you a highly technical opinion, and he has no

(Testimony of H. Foster Bain.)

responsibility whatever for carrying out a thing or getting anything done, and in the Government service there are a great many men whose business it is to pass the buck and to pass the responsibility on to somebody else; and when we ask for an opinion from another department, we never know what kind of a lawyer is going to pass on it. They have some very excellent lawyers in the Department of Justice, but when you ask for an opinion over there, you don't know whether it will get to one of them or somebody who is merely interested in building up a good record for himself, and never letting anything be done which might come back on him." [481—398]

The witness was familiar with the custom in the executive departments at Washington as to when opinions of the Attorney General were asked; they are asked when the department itself is in doubt.

Witness then went to Alaska on official business connected with the Department in May, 1922, and did not return to Washington until late in July, when he went there in response to a telegram from his secretary, who wished to have Dr. Bain act with him on the President's committee, composed of Secretary Hoover and others, in the distribution of coal during the strike, and he was so occupied until the strike was settled, in October, 1922. In that month, there came into Dr. Bain's possession a document relating to the oil situation in California and in the oil reserves, a photostat of which the witness identifies as Plaintiff's Exhibit 157. The witness received

(Testimony of H. Foster Bain.)

that paper, however, from Secretary Fall, in his office, some time in October, 1922; when Mr. Fall handed that paper to witness, he said, "take it up with the Admiral"; that is Admiral Robison, and he did not say anything more on that subject at that time. The witness did take that paper up with Admiral Robison within a week or two after receiving it from Mr. Fall, showing the Admiral the paper and also some memoranda which witness had prepared on the basis of telegraphic advice from Mr. Cutler, who was then acting in the Bureau's office at Bakersfield, which memoranda had to do with the prospective amount of oil to be won from Reserve No. 1, on the basis of various hypotheses as to the royalties and rates of production and things of that sort. Dr. Bain discussed conditions with the Admiral and also discussed with him the depression in the price of oil, and the way that was affecting the income on the previous contract, and the Government revenues; witness and Admiral Robison had a considerable [482—399] discussion of that kind on the whole oil situation. Admiral Robison suggested that he did not know how far the Navy was prepared to go at that time in provision of further storage, or in opening up the reserves, and that he would take it up and discuss it with his associates, and with the Secretary of the Navy; there was nothing else that the witness can remember in this discussion with Admiral Robison.

The next that Dr. Bain heard of the subject was some time very late in October or early in Novem-

(Testimony of H. Foster Bain.)

ber, Mr. Cotter came to his office and mentioned this memorandum (Exhibit 157) and asked witness what had been done about it, and Dr. Bain told Cotter that the Secretary had given it to witness to take up with the Admiral, and that he had taken it up with the Admiral, and that nothing more would be done unless the Navy wanted something done; witness told Cotter if he wanted to push the matter, or to have any further information about it, to go to the Navy.

As to when next witness learned anything on that subject, some time in November, 1922, Mr. Doheny's second memorandum came to Dr. Bain, through the Secretary's office; that memorandum being Exhibit 158, one copy of which was sent under cover of a letter of November 6, 1922 (Exhibit No. 157). Witness received instructions with respect to the subject matter of that memorandum from Secretary Fall, which instructions were to do nothing except as the Navy wanted it done; the Secretary at this time further said that it was Navy business; witness did not take this second memorandum up with anybody, but waited for the Navy to take it up with him, and they took it up almost immediately, Admiral Robison from the Navy Department taking it up. Prior to the receipt by the Interior Department of letter dated November 29, 1922, from the Secretary of Navy (Exhibit [483—400] 166), Admiral Robison told the witness that he was discussing the subject of the above-mentioned memorandum with the officials of the Navy, and he thought that

(Testimony of H. Foster Bain.)

the Navy would decide to go ahead; witness does not recall that anything was said in that discussion to him by Admiral Robison about Pearl Harbor.

After the talk with Admiral Robison which the witness has last testified to, the next thing he recalls was the receipt of the letter of November 29, 1922 (Plaintiff's Exhibit 166); his recollection is that that letter came to him through the Secretary's office; he does not recall any instructions given him orally or in writing by the Secretary in connection with that letter; after witness received the letter of November 29, he got hold of Mr. Cotter and Admiral Robison, and arranged for a meeting at the office of witness, to start negotiations on the basis of that letter. As to what, if anything, Admiral Robison said to witness regarding a lease of the reserve, or any part of it, Admiral Robison said that the Navy would lease the whole reserve if they got enough for it; that he was anxious to have drilling restricted as far as could be done, compatible with making the kind of a bargain that the Navy wanted; the matter as to what section of part of the reserve he wanted restrictions on came up later.

After his talks with Admiral Robison, witness had part in a series of negotiations prior to the execution of the December 11, 1922, contract; the negotiations occurred in his office in the Interior Department; the first meeting included Mr. Doheny, Mr. Anderson and Mr. Cotter of the Pan American Company; Mr. Ambrose, Admiral Robison and witness; there was a general discussion of what it was

(Testimony of H. Foster Bain.)

proposed to do, and how it should be done, and the preference right and its [484—401] restriction to the eastern part of the reserve. Following that general discussion, Mr. Doheny left, and through a series of days there were discussions participated in mainly by Mr. Anderson and Mr. Cotter on one side, and Mr. Ambrose and witness on the other, with Admiral Robison coming in from time to time and being communicated with by telephone in between. Dr. Bain's recollection is that Admiral Robison at the time was very busy with some appropriation matter before Congress, and could not be there all the time. In these discussions, Mr. Ambrose and the witness had before them the November 6, 1922, memorandum; there was no other written proposal before them except that and the November 29 letter. When the question of the royalties from the oil from Reserve No. 1 came up for discussion, Mr. Anderson of the Pan American Company proposed the Interior Department's regulation royalties, which provided royalties of from 12½ per cent to 20 per cent for oil of one Baume test and 12½ to 25 per cent for oil of another Baume test. When Anderson's proposition was made, Cotter, Ambrose and Admiral Robison and the witness were present; the reply made to Anderson was, "We could not possibly think of leasing him the ground on those royalties; we would have to have a great deal more"; then there was a fine row over royalties. Admiral Robison was present while the royalties were being discussed; he said he wanted a

(Testimony of H. Foster Bain.)

royalty which started with 14 $\frac{1}{2}$ per cent, instead of 12 $\frac{1}{2}$ per cent, and which ran up—witness has forgotten the limit, but materially above the regulation royalties. The officials of the Bureau of Mines supported Admiral Robison in his position “as we were acting for the Navy.” Admiral Robison gave us part of the information outside of the conference room, and at times took part in the conference himself, trying to impress Mr. Anderson with the [485—402] necessity of our getting a larger royalty, and with the fact that he could pay a larger royalty. Mr. Anderson was very firm that those royalties that we asked for were too high; the other details of the contract, as distinguished from the lease, were discussed also by the same parties. With the royalty situation as witness has testified, Mr. Ambrose prepared, or had prepared for witness, a large tabulation of what the actual result in barrels would be in applying various schedules of royalties to wells of various sizes; that is, assuming the wells were 20-barrel wells, or 50-barrel wells, or 100-barrel wells, what the net effect would be of different royalties, including the ones Mr. Anderson was contending for, the regulation royalties, and the ones that Admiral Robison wanted, the ones we had obtained in the Mammoth lease, and the ones we had obtained in various leases around in Reserve No. 1; it was a whole tabulation of the matter. This tabulation was gone over with Admiral Robison, and parts of it with Mr. Anderson; witness is not certain he ever showed the whole tabulation to

(Testimony of H. Foster Bain.)

Anderson. During these discussions, in addition to Anderson, Cotter of the Pan American Company was also always present; "We came finally to the point where we had been able to agree on every other matter except the royalties and the conference broke up on that point, Mr. Anderson saying that he would not accept the Admiral's royalties or anything except what he proposed"; so witness then took the sheet and these statements up to the office of Secretary Fall, and talked them over with him, and then he and witness worked out an intermediate or compromise set of royalties as being a fair basis, and one which perhaps could be agreed upon. These were worked out in pencil and typewritten copies made in the Secretary's office; Secretary Fall instructed the witness to take that up [486—403] with Admiral Robison; he also, either at witness' suggestion or at his own, or it was agreed that witness should give a copy to Mr. Cotter, and he would see if Mr. Doheny would take it up; the Secretary pointed out that if Mr. Anderson was firm in his position, the negotiations would probably fail because Mr. Doheny could hardly be in a position of forcing on one of his own men a royalty which his own man did not believe could be made to pay; witness did take the copies downstairs and gave one to Mr. Cotter and told him to take it up with Mr. Doheny, while the witness took it up with the Admiral; Admiral Robison studied it and came back and talked to witness and Mr. Ambrose; the conference at that time had broken up; Admiral Robison

(Testimony of H. Foster Bain.)

also went up and talked it over with Secretary Fall; witness was not present at this talk; Admiral Robison came back and stated he wanted to do some more trading; that he still thought he could get a higher royalty; there followed a further conference on the subject of royalties in Dr. Bain's office, at which there were present Admiral Robison, Mr. Ambrose and Dr. Bain, and Mr. Doheny, Mr. Anderson and Mr. Cotter. This was a few days before December 11; at that time Secretary Fall had received a letter from Mr. Doheny, dated December 8, 1922, and being Exhibit 167 in this case; the Secretary had received this letter from Mr. Doheny, and had handed it to witness, and then there was a further conference in witness' office, Mr. Doheny coming in with Mr. Anderson and Mr. Cotter; Admiral Robison was there; Admiral Robison still wanted to get a better royalty, and made a further proposal of some sort that witness does not remember, and Mr. Doheny got mad and threatened to leave, and conditions were strained there for a little while; then Admiral Robison thought it over, and there was some further talk, and finally the Admiral agreed to the schedule which was a compromise schedule, and [487—404] which went into the December 11, 1922, lease (Exhibit "D" to Amended Bill of Complaint).

The witness identified letter dated December 8, 1922, as one drafted by Secretary Fall and sent to Admiral Robison, which letter was thereupon

received in evidence, as Defendants' "FFF," and reads as follows:

DEFENDANTS' EXHIBIT "FFF."

My dear Admiral:

As you are aware, I immediately took up with the Pan American Co., through Colonel Doheny, the suggestions contained in the recent letter of Secretary Denby, concerning your additional requirements for the storage, etc., of naval oils. You have been in close touch with the experts of the Bureau of Mines and representatives of the Pan American Co. and Doheny.

There have been, as you know, some disputes, or failures to agree rather, concerning the amounts of royalty to be charged.

As the foundation for discussion, I made a tentative suggestion that the royalties should be based upon a 0-50 barrel production, to bear 12-1/2 per cent royalty, providing also for 30-35 per cent royalties on production over 200 barrels.

I have understood that you urged a minimum royalty of one-seventh, instead of a royalty of one-eighth, and, as I stated to you over the telephone, I should certainly not approve any contract based upon any royalties with which you were not in thorough agreement.

The Pan American people, or Colonel Doheny, upon the other hand, urged a minimum royalty based upon a larger production than 0-50, and had opposed larger royalties than 30-35 per cent.

However, I am this morning in receipt of a note from Colonel Doheny, a copy of which I am handing you herewith. In this note Colonel Doheny states that they have finally [488—405] concluded that they will accept the royalties "Which the Government has offered us."

I presume that he refers in this language to the royalties suggested by myself tentatively as affording ground for discussion and which I have just hereinbefore referred to, to wit:

0- 50 barrels, $12\frac{1}{2}$ per cent on oil of 30° gravity and over.

50-100 barrels, $14\frac{2}{7}$ per cent on 30° gravity;
 $16\frac{2}{3}$ per cent over 30° gravity.

100-150 barrels, $16\frac{2}{3}$ per cent on 30° gravity; 20 per cent over 30° gravity.

150-200 barrels, 20 per cent on 30° gravity; 25 per cent over 30° gravity.

200-500 barrels, 25 per cent on 30° gravity; 30 per cent over 30° gravity.

Over 500 barrels, 30 per cent on 30° gravity; 35 per cent over 30° gravity.

Unless these royalties are entirely satisfactory to you and unless the draft of the contract in other respects is entirely satisfactory, I will immediately notify Colonel Doheny of your conclusions.

I will not agree to nor sign any contract whatsoever in the way of a modification of the existing contract or otherwise which is not in every particular satisfactory to you, as you have been designated

(Testimony of H. Foster Bain.)

by the Secretary of the Navy to represent him personally in this matter.

Very respectfully yours,

ALBERT B. FALL,
Secretary of the Interior.

Witness was acquainted with the contents of the foregoing letter when it was dispatched; he is not certain whether he was present when it was drafted, or whether it was a telephone conversation with Admiral Robison referred to therein that he knew about. [489—406]

Witness identifies a communication dated December 9, 1922, as having been received at the Interior Department from Admiral Robison, and the same, as Exhibit "GGG," was thereupon read in evidence, and is as follows:

DEFENDANTS' EXHIBIT "GGG."

My dear Mr. Secretary:

In answer to your letter of December 8 concerning the proposed modifications in the contract of April 25, 1922, between the Government and the Pan American Petroleum & Transport Co., I have given very serious consideration to the royalties that the contractor is willing to pay on the additional leases, to which he has preferential right under the terms of the original contract. In view of the records of production in the oil field, of which naval reserve No. 1 is a part, it appears that the royalties as given by you in your letter of yesterday are materially in excess of the standard

(Testimony of H. Foster Bain.)

royalties and furnish the Government a material premium or bonus for the additional leases.

In view, further, of the great value to the Government of the immediate construction of additional naval facilities for the storage of oil and of the assumption on the part of the contractor of the entire risk of repayment through royalty oils, it appears desirable that the Government acquiesce in the royalties suggested by yourself.

I am going over the details of the proposed supplementary contract. This contract as now prepared appears satisfactory. I will give you definite information as soon as I have been advised by the legal authorities of the department.

Thanking you for your consideration in this matter and for the assistance that you are giving in the accomplishment of the national security, I am,

Very respectfully yours,

JOHN K. ROBISON,

Engineer in Chief, United States Navy.

[490—407]

Mr. Ambrose, Mr. Anderson and Mr. Cotter and Dr. Bain, worked on the drafting of the contract and lease of December 11, 1922. In connection with getting up the schedule of royalties in the way he has testified, the witness had before him the royalty bids previously received on lands in Naval Reserve No. 1. As regards recommendation made as to the royalties for the December 11, 1922, lease, the Bureau of Mines, Mr. Ambrose and himself in that Bureau, "recommended the lease on those terms,

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(Testimony of H. Foster Bain.)

the Navy decided whether the lease was to be made."

After the December contract had been drafted, but before it was signed, a copy of it was given to Admiral Robison for study; he had it two or three days; then there was received letter dated December 11, 1922, which the witness identifies, and which is Defendants' Exhibit "HHH," which was read in evidence and is as follows:

DEFENDANTS' EXHIBIT "HHH."

NAVY DEPARTMENT,
BUREAU OF ENGINEERING,
WASHINGTON.

11 December, 1922.

My dear Mr. Secretary:

The copy of the supplementary contract between the Government and the Pan-American Petroleum and Transport Company for accomplishing the completion of the oil storage in Pearl Harbor, etc., has been carefully reviewed by me and by the Judge Advocate General of the Navy. With the exception of a few verbal changes that have been noted thereon, this copy is entirely satisfactory to the Navy Department and is believed to be an advantageous one for the Government to enter upon.

I assume that the Interior Department will prepare the final contract for signature and unless

(Testimony of H. Foster Bain.)

otherwise directed will act accordingly.

Very respectfully,

J. K. ROBISON,

Engineer-in-Chief, U. S. Navy.
Chief of Bureau. [491—408]

After the receipt of this communication of December 11 from Admiral Robison, the drafts of the contract and lease of December 11 were recopied, where necessary; witness' recollection is that only a few pages had to be recopied. Witness was present at the time the contract was signed by Secretary Fall; this was done in the Secretary's office, there being present Mr. Doheny, Mr. Cotter and Dr. Bain. Dr. Bain presented the contract and lease to Secretary Fall; it had previously been signed by Mr. Doheny in the office of the witness; when witness presented it to Secretary Fall, he told the Secretary this was a contract that had been worked up; the Secretary at that time, to the witness' knowledge, had seen the letter of December 11 from Admiral Robison last above quoted; Secretary Fall had not seen the contract or any draft thereof prior to that time; when the drafts were presented to Secretary Fall, he read the same through carefully, he asked if it was all right, addressing the whole party; witness answered that it was; Admiral Robison was not there, so far as witness recollects; Mr. Fall signed the contract and lease and the same was taken down to the Navy Department by Mr. Cotter; witness was not present when Secretary Denby signed it, but was

(Testimony of H. Foster Bain.)

informed when the papers had been signed by Secretary Denby. After Mr. Doheny had signed the contract in Dr. Bain's office, and before Dr. Bain and Messrs. Doheny and Cotter went up to Secretary Fall's office, Admiral Robison, who was present, telephoned down to the Navy Department and asked Secretary Denby to remain there until he could bring the papers down for signature.

Subsequent to the signing of the contract of December 11, there was received by the Interior Department, at about the time of their dates, letter dated January 17, 1923, signed by Admiral Gregory, and letter dated January 19, 1923, signed [492—409] "Theodore Roosevelt, Acting Secretary of the Navy"; there was explained to the Court that the last referred to letter bore a rubber stamp impress and the word "Confidential" in large letters, with the explanation to the Court that the character of this stamp was not evident from the mere copying of the word in typewriting; the witness testified that that word was stamped there on many papers, not all of them.

Thereupon there was offered and received in evidence the above referred to letter, dated January 17, 1923, which was marked on the letterhead of the Bureau of Yards and Docks, Navy Department, Washington, D. C., and the same was marked Exhibit "III," and reads as follows:

DEFENDANTS' EXHIBIT "III."

From: Chief of Bureau of Yards and Docks.
To: The Secretary of the Interior.
Subject: Additional Fuel Oil Storage, Naval Station, Pearl Harbor, T. H.

Reference: (a) Agreement between Pan-American Petroleum and Transport Company and the United States of America by the Secretary of the Interior and the Secretary of the Navy, dated December 11, 1922.

(b) Approval of the Secretary of the Navy, dated January 16, 1923, on report of Yard Development Board, dated January 10, 1923, regarding location of oil storage tanks at Naval Station, Pearl Harbor, T. H.

Inclosures: (A) Three sets of specification No. 4800.

(B) Three sets of blue-prints (Six plans each).

1. I have had prepared a set of plans and specifications covering the additional storage for petroleum products at the Naval Station, Pearl Harbor, which is to be constructed and filled in connection with the exchange of royalty oil obtained from the Naval Petroleum Reserves. The work is covered by six drawings as follows:

Sheet Bureau

No.	Serial No.	Description.
1	98168	General Plan.
2	98231	General Plan Gasoline Storage.
3	98169	Lubricating Oil Storage Building.
4	98027	150,000-barrel Tank.
5	98026	80,000-barrel Tank.
6	98170	225,000-gallon Gasoline Tank.

[493—410]

2. The specification describes the construction to be performed, and includes the General Provisions which form a part of all Yards and Docks, Navy Department contracts for public works.

3. The specification is complete but the drawings, while they show the scope and some of the details of the work, will be supplemented by further detailed drawings, which will be provided as the work proceeds.

4. Additional sets of drawings will be furnished in any number which you may require. It is my intention to have the specification printed; after which, copies will be substituted for the blue-prints forwarded herewith and additional copies will then be available in such number as may be necessary.

5. In view of the fact that this project is embodied in the war plans of the Navy Department, it is requested that all matters in connection therewith be held as confidential as practicable.

L. E. GREGORY.

Thereupon there was offered and read in evidence the above referred to letter of January 18, 1923, which, as Defendants' Exhibit "JJJ," was read as follows:

DEFENDANTS' EXHIBIT "JJJ."
THE SECRETARY OF THE NAVY,
WASHINGTON.

18 January, 1923.

Confidential.

My dear Mr. Secretary:

In further reference to contract dated 11 December, 1922, with the Pan American Petroleum and Transport Company wherein it is provided that the contractor will cause to be constructed, at Pearl Harbor, T. H., storage for specified amount of petroleum products,—there was delivered, by representative of the Navy Department, on 17 January, 1923, to the Director of the Bureau of Mines, Department of the [494—411] Interior, a copy of specifications No. 4800 and certain plans. These specifications and plans were prepared by Rear Admiral L. E. Gregory (CEC), Chief of the Bureau of Yards and Docks of this Department, and were delivered to your Department for use in accordance with Article 1, paragraph 2, of the contract of 11 December, 1922.

Since, under the contract, the date of final completion of this project is dependent upon the date of placing the formal order with the contractor, it is requested that steps be taken by the Department

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(Testimony of H. Foster Bain.)

of the Interior to formally place with the constructor at the earliest practicable date the order to proceed with the construction of these storage facilities at Pearl Harbor, T. H.

Very sincerely yours,

THEODORE ROOSEVELT,

Acting Secretary of the Navy.

Witness identified letter from the Secretary of the Interior to the Pan American Petroleum & Transport Company, bearing date January 19, 1923, which, as Defendants' Exhibit "KKK," was read in evidence and is as follows:

DEFENDANTS' EXHIBIT "KKK."

Pan American Petroleum and Transport Co.,
120 Broadway,
New York, N. Y.

Gentlemen:

In accordance with the contract between you and the Government made April 25, 1922, and the supplementary contract of December 11, 1922, you are hereby authorized and directed to proceed at once with the construction of the additional storage facilities called for in the attached specifications and plans, to wit; Specifications and plans No. 4800 prepared by the Bureau of Yards and Docks of the Navy Department.

As provided in the contract, the work is to be completed within two years from date of delivery of specifications to-day. [495—412]

As further provided, the work is to be done at

(Testimony of H. Foster Bain.)

cost and such cost will be audited in the same manner as is now being followed under the contract of April 25, 1922. It is further understood that you will procure sub-contracts let on competitive bidding for at least 80% of the work. It is also understood that the Chief of the Bureau of Yards and Docks, Admiral L. E. Gregory, heretofore authorized to represent the Secretary of the Interior in supervision of construction under your contract, shall have as complete control as he may desire to exercise over the letting of the subcontracts and the supervision of sub-contracted work and over the purchase of materials, apparatus and supplies for and the supervision of the remainder of the work.

The manner for conducting this work proposed by the J. G. White Engineering Corporation under date of December 26, 1922, has been examined and found satisfactory and you are hereby authorized to adopt and follow it in the construction herein ordered.

A copy of a letter from the Acting Secretary of the Navy, Theodore Roosevelt, of January 18, 1923, requesting and authorizing this Department to issue to you this formal order to proceed with the work of construction is herewith attached.

Your acknowledgment of the receipt of this letter is requested.

Respectfully,

(Signed) ALBERT B. FALL,

Secretary.

And for Secretary Navy, at his request.

(Testimony of H. Foster Bain.)

The witness drafted the foregoing letter, dated January 19, 1923, which Secretary Fall signed; the words, "And for Secretary Navy, at his request," are in the handwriting of Secretary Fall. [496—413]

Thereupon there was offered and received in evidence the following communications, Defendants' Exhibit "LLL":

DEFENDANTS' EXHIBIT "LLL."

19 January, 1923.

The Secretary of the Interior,
Department of the Interior,
Washington, D. C.

Dear Sir:

Receipt is acknowledged of your letter dated January 19, 1923, directing that we proceed at once with the construction of the additional storage facilities called for in the plans and specifications transmitted with said letter, being specifications and plans No. 4800 prepared by the Bureau of Yards and Docks of the Navy Department, and the instructions contained therein will be complied with.

Respectfully,

PAN AMERICAN PETROLEUM &
TRANS. CO.

By J. J. COTTER,
Vice-President.

JJC-j.

The witness recalls that, whereas, by the terms of the contract of April 25, 1922, the 1,500,000

(Testimony of H. Foster Bain.)

barrels of fuel oil were to be delivered at Pearl Harbor after the construction, in quantities equal to the royalty crude oil then available to be turned over in exchange to the contractor, by the December 11, 1922, contract, that was changed so as to give the Government the right to call for the fuel oil and direct its delivery regardless of the availability of royalty crude to be delivered to the contractor; pursuant to that change, there was taken up, after the making of the December 11, 1922, contract, with the contractor, the matter of delivering that 1,500,000 barrels. There came to the witness' possession letter dated January 16, 1923, addressed to the Secretary of the Interior and the Secretary of the Navy, signed "Pan American Petroleum and Transport Company, by Jos. J. Cotter, Vice President"; witness discussed it with Admiral Robison. [497—414] As Exhibit "MMM" said letter was received in evidence and reads as follows:

DEFENDANTS' EXHIBIT "MMM."

16 January, 1923.

The Secretary of the Interior,

The Secretary of the Navy,

Washington, D. C.

Sirs:

Under the provisions of our contract with the United States of America dated April 25, 1922, we agreed to furnish in exchange for Government royalty crude oil from Naval Petroleum Reserves

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One and Two in the State of California, 1,500,000 barrels of fuel oil delivered into storage at Pearl Harbor, T. H.

The value at which this fuel oil is to be charged to the Government in this exchange was provided to be the Bay Point, California, market price thereof at date of delivery. That price as stated in said contract was \$1.50 per barrel. That price is now \$1.00 per barrel.

We have been informally advised that the Government desires to take advantage of this present price of fuel oil and to fill the 1,500,000 barrels of storage at Pearl Harbor, T. H., as soon as practicable, and we have been informally requested to inform the Government of the best price at which this entire quantity of fuel oil can be furnished to be delivered as the storage tanks now under construction at Pearl Harbor, T. H., are completed and ready to receive same.

We have a construction estimate from which it appears practicable to commence the delivery of this oil now and to complete such delivery of the 1,500,000 about October 31st of this year. We have made inquiry as to the procuring of this fuel oil and find that it can be procured for delivery over this period of time to our tankers at Port Costa, California, at \$.90 per barrel, which, in view of the fact [498—415] that it was not our intention that any profit should accrue to us by reason of the purchasing of this fuel oil whether or not it were possible for us to secure same at less than the Bay

(Testimony of H. Foster Bain.)

Point, California, market price, would make the charge to the Government therefor delivered at Pearl Harbor, T. H., \$1.36- $\frac{2}{3}$ per barrel.

Will you please advise us of the Government's wishes in this connection.

Respectfully,

PAN AMERICAN PETROLEUM &
TRANSPORT CO.

By JOS. J. COTTER,

Vice-President.

Prior to the receipt of that letter, witness had asked Mr. Cotter when his company would be prepared to put the oil in tanks, and he stated he would find out how rapidly the tanks could be made ready for the oil; witness also asked Cotter to ascertain the prices at which the company was prepared to put the oil in the tanks; that is witness' understanding of Mr. Cotter's references to having been "informally advised" of the Government's desire, contained in the last quoted exhibit.

There also was a discussion among Admiral Robison and the witness and Mr. Cotter with regard to the contract providing that the contractor should get the market price; in that respect, witness said that the contract provided for the market price, which was \$1 per barrel; Admiral Robison contended that while this was so, the contract also intended that there should be no profit made out of the transaction, and there was a triangular discussion there among Robison, Cotter and Bain as to what price the Pan American should charge for

(Testimony of H. Foster Bain.)

this oil; Mr. Cotter said he would take the question up with the officers of his company, and reach a decision, and he agreed, on behalf of the company, ultimately that the price should be [499—416] 90 cents a barrel, or 10 cents less than the agreed market price; in the discussion referred to, Mr. Cotter had said that he thought that his company was entitled to the market price, but that he would take it up.

The Petroleum Division of the Bureau of Mines checked on the market price of fuel oil at that time at San Francisco Bay points, the points specified in the contract for the delivery of oil; it was ascertained that the market price of that oil was a dollar a barrel at these places; witness submitted this information to Admiral Robison; Admiral Robison thought a better price might be obtained; he consulted the Bureau of Supplies and Accounts in the Navy Department, and they thought a better price might be obtained, so Admiral Robison stated; witness went to Admiral Robison's office; the Admiral called in the Chief of the Bureau of Supplies and Accounts and some other officer of that Bureau; a consultation was had as to the price; the prices which had been paid by the Shipping Board at that time were brought up, and Admiral Robison suggested or said that the Bureau of Supplies and Accounts should endeavor to get a better price, and witness stated that if they could get a better price, we would have the contractor put it in at that better price; so they made an attempt to do that, and re-

ported back after a few days, that they could get no better market price than a dollar per barrel.

Thereupon there was offered and received in evidence, as Defendants' Exhibit "NNN," the following communication, dated January 19, 1923, it being agreed by counsel for the Government and defendants that the signer is Rear Admiral David Potter, Paymaster General, Chief of the Bureau of Supplies and Accounts of the Navy, which Bureau is the one referred to by the witness Bain in his testimony above: [500—417]

DEFENDANTS' EXHIBIT "NNN."

19 January, 1923.

The Bureau of Mines,
Department of the Interior,
Washington, D. C.

Attention: Dr. H. F. Bain.

Dear Mr. Bain:

The Bureau of Supplies and Accounts understands that the Pan American Petroleum and Transport Company has made an offer of \$1.36- $\frac{2}{3}$ as the adjustment rate per barrel for delivery of 1,500,000 barrels of fuel oil into naval storage tanks at Pearl Harbor erected under the contract between the Pan American Petroleum and Transport Company and the Departments of the Interior and Navy, dated 25 April, 1922. This rate is not acceptable, at present.

The Bureau of Supplies and Accounts believes it possible to obtain delivery of the 1,500,000 barrels

of fuel oil into naval storage tanks at Pearl Harbor at less than \$1.36- $\frac{2}{3}$ per barrel. The Navy has at the present time a contract for six months covering delivery of fuel oil for current use into naval storage tanks at Pearl Harbor at \$1.28 per barrel. The United States Shipping Board has a contract covering a period of eighteen months for delivery at West Coast points of approximately 40,000 barrels per month at \$.81 per barrel and with the going rate of transportation added thereto makes the price being paid by the Shipping Board about \$1.00 per barrel, at Pearl Harbor.

In view of these facts the Bureau of Supplies and Accounts is not willing to accept the offer of the Pan American Petroleum and Transport Company until it has been able to determine that the rate offered is the best obtainable under the contract.

You will be advised further as soon as practicable.

Respectfully,

DAVID POTTER,

Paymaster General of the Navy.

(Red crayon)

Chief has seen

W

Copy to: Bureau of Engineering. [501—418]

Thereupon there was offered in evidence a communication dated January 25, 1923, from Admiral David Potter, Chief of the Bureau of Supplies and Accounts, to Secretary of the Navy, via the Bureau of Engineering, which was marked Defendants' Exhibit "000," and reads as follows:

DEFENDANTS' EXHIBIT "OOO."

SUBJECT: Department of Interior's and Navy
Department's Contract with the
Pan American Petroleum and
Transport Company of April 25,
1922.

1. On January 15, 1923, by reference from the Chief of the Bureau of Engineering, it was learned that under the contract referred to, the Pan American Petroleum and Transport Company had offered to make delivery of 1,500,000 barrels of fuel oil into naval storage tanks at Pearl Harbor at an adjustment rate of $\$1.36\frac{2}{3}$,

2. In view of the fact that the Navy has a six months contract with the Union Oil Company of California for the delivery of fuel oil for current use at Pearl Harbor, at a price of \$1.28 per barrel, and in view of the fact that the Shipping Board has an eighteen months contract for the delivery of fuel on the West Coast at \$.81 per barrel, which increased by the present transportation rate of the Shipping Board would make a price of about \$1.00 per barrel at Pearl Harbor, this Bureau thought it advisable to secure special quotations for the delivery of fuel oil at Pearl Harbor in order that, if lower prices were secured than the adjustment rate offered by the Pan American Petroleum and Transport Company, that company might be persuaded to accept an adjustment rate as low as prices that might be quoted to the Bureau by the test indicated.

This Bureau therefore communicated with the Bureau of Mines of the Department of the Interior and stated that the adjustment rate of $\$1.36\frac{2}{3}$ should not be regarded as acceptable until further information was received.

3. In accordance with the above plan, quotations have [502—419] been secured from the following companies:

Associated Oil Company—\$1.00 per barrel at San Pedro. \$1.40 per barrel delivered at Pearl Harbor.

General Petroleum Corp.—\$1.00 per barrel at San Pedro.

Union Oil Company—\$1.00 per barrel at Port San Luis.

Standard Oil Company of California—\$1.40 per barrel delivered at Pearl Harbor.

Shell Oil Company— $\$.97\frac{1}{2}$ per barrel at Martinez for 500,000 barrels only.

All bids were for the full quantity of 1,500,000 barrels with the exception of the Shell Oil Company.

4. The Bureau has not been able to obtain a price for the purpose of comparison lower than that understood to have been offered by the Pan American Petroleum and Transport Company as above referred to, viz.: $\$1.36\frac{2}{3}$.

5. It is requested that Supplies and Accounts be advised of the action that may be taken in this matter.

DAVID POTTER.

(Testimony of H. Foster Bain.)

At the foot of the foregoing exhibit, in pencil, appears the following: "Chief has seen W.," which counsel for the parties stipulate is a memorandum placed thereon by Commander Woodson of the Bureau of Engineering, and indicates that the last quoted letter was seen by Admiral Robison.

Witness Bain thereupon testified that he prepared a letter to be signed by the Secretary of the Interior, to be sent to the Pan American Petroleum and Transport Company, in reply to that company's letter of January 16, 1923 (Defendants' Exhibit "MMM"), and sent the draft of that letter to the Navy Department, from which Department it was returned with a memorandum signed by Admiral Robison, dated January 26, 1923, in which memorandum it is stated, "your letter is satisfactory," referring to the above-mentioned draft of letter to be sent to the Pan American Petroleum and Transport Company; accompanying Admiral Robison's memorandum was also a letter to the Secretary of the [503—420] Interior, dated January 26, 1923, signed "Edwin Denby"; thereupon the letter to the defendant company, which the witness had drafted, was dated January 26, 1923, and was forwarded to the addressee; witness identifies the memorandum and letter thus referred to, and the same were offered and received in evidence as Defendants' Exhibits "PPP," "QQQ," "RRR." Exhibit "PPP" is memorandum from the Navy Department, for the Director of the Bureau of Mines, dated January 26, 1923, reading as follows:

DEFENDANTS' EXHIBIT "PPP."

So far as I can see, your letter is satisfactory.

I am enclosing Secretary of the Navy's endorsement upon the project.

As near as I can see, this ends our job with the Pan American Company. (As to gaging, we will, for the time being, gage and test at Honolulu as provided for in the terms of the original contract. If, in practice, any serious difficulties are involved, I am sure that a change to Port Costa can be brought about.)

All that the Pan American has got to do now is to go ahead and carry out the terms of their contract of December eleventh; and we will have a first-class plant at Pearl Harbor,—Let us congratulate each other.

(Signed) JOHN K. ROBISON,
Engineer-in-Chief, U. S. N.

Exhibit "QQQ" was a letter dated at Washington, January 26, 1923, addressed to Hon. Albert B. Fall, Secretary of the Interior, and reads as follows:

DEFENDANTS' EXHIBIT "QQQ."

Sir:

The within proposal of the Pan American Petroleum and Transport Company, to furnish 1,500,000 barrels of fuel oil for storage at Pearl Harbor, T. H., is recommended for immediate acceptance. [504—421]

This Department has made investigation, and has been unable to obtain a price lower than that offered

by the Pan American Petroleum and Transport Company in the within letter.

For the security of the national defense, it is necessary that the supply of this 1,500,000 barrels of fuel oil be made as soon as possible.

Respectfully,

EDWIN DENBY.

Exhibit "RRR" is the letter referred to as "satisfactory" in the above Exhibit "PPP," and is dated at Washington, January 26, 1923, addressed to the Pan American Petroleum and Transport Company, and reads as follows:

DEFENDANTS' EXHIBIT "RRR."

Gentlemen:

In response to your letter of January 16 and in accordance with your contract with this Department of April 25, 1922, as approved by the Secretary of the Navy, and your supplementary contract of December 11, 1922, and in accordance with the expressed wish of the Secretary of the Navy as per his letter of today, of which copy is attached, I hereby authorize and direct you to purchase 1,500,000 bbl. of fuel oil on the Pacific Coast and to deliver the same into storage at Pearl Harbor.

It is understood the price to be paid shall be ninety cents per barrel which added to the heretofore agreed transportation charge will make the price of the oil in storage at Pearl Harbor \$1.36- $\frac{2}{3}$ per barrel; that deliveries into storage shall begin in February and be completed as nearly as may be

820 *Pan American Petroleum Company et al.*

on or before November 1, 1923, and that the terms of acceptance and payment for this fuel oil shall be as specified in the contracts mentioned.

Respectfully,

ALBERT B. FALL,
Secretary. [505—422]

Thereupon there was received in evidence the following letter as Defendants' Exhibit "SSS":

DEFENDANTS' EXHIBIT "SSS."

April 26, 1923.

The Secretary of the Interior,
Washington, D. C.

Dear Mr. Secretary:

Reference is made to the letter of the Secretary of the Interior addressed to this Company under date of January 26, 1923, directing this Company to purchase 1,500,000 barrels of fuel oil on the Pacific Coast and to deliver same into storage at Pearl Harbor.

In this letter it was stated: "It is understood the price to be paid shall be ninety cents per barrel which added to the heretofore agreed transportation charge will make the price of the oil in storage at Pearl Harbor \$1.36- $\frac{2}{3}$ per barrel." The direction to purchase this oil was made pursuant to our contract dated April 25, 1922, with the Secretary of the Interior and the Secretary of the Navy, and under that contract the price to be charged the Government for this fuel oil was provided to be the Bay Point, California, market price thereof at date

of delivery, plus our charge for tanker transportation to Pearl Harbor which was $46\frac{2}{3}\text{¢}$ per barrel.

At the date of the Secretary's letter (January 26th) the Bay Point, California, price of this oil was \$1.00 per barrel, but through negotiation we were able to procure this 1,500,000 barrels of oil on the Pacific Coast at 90¢ per barrel, which added to the transportation charge of $46\frac{2}{3}\text{¢}$ results in the price of $\$1.36\frac{2}{3}$ per barrel, as stated in the Secretary's letter.

In addition to procuring this oil at the price of 90¢ or 10¢ less than the market price, we were able to make an arrangement with the company from whom we purchased same (the Associated Oil Company) under which we were given the benefit of the following provision: "It is understood between [506—423] us that should open sales price of fuel oil on San Francisco Bay (which is now \$1.00 per barrel) decline, the price of ninety cents (\$.90) will decline likewise."

The purpose of this letter is to notify the Department of this provision and to state that should decline in price to us occur, such decline in price will inure to the Government.

Respectfully,

PAN AMERICAN PETROLEUM &
TRANSPORT COMPANY

JJC-r.

By JOS. J. COTTER,
Vice-President.

There was next introduced in evidence Defendants' Exhibit "TTT," being letter dated at Wash-

(Testimony of H. Foster Bain.)

ington, May 3, 1923, addressed to Mr. J. J. Cotter, Pan American Petroleum & Transport Company, New York, and reading:

DEFENDANTS' EXHIBIT "TTT."

Dear Mr. Cotter:

I am very glad to have your informative letter of April 26th, in which you outline the negotiations directed towards purchasing 1,500,000 barrels of fuel oil for Navy Storage at Pearl Harbor.

Although this contract was made for the benefit of the Navy Department, this Department, as well, appreciates your work in having consummated the provision that, should the price of fuel oil decline while the contract is in effect, such decline in price will be shared in by the government.

Very truly yours,

E. C. FINNEY,

First Assistant Secretary.

The witness Bain, continuing, testified that in the matter of operations under the contract of April 25, 1922, the supplemental contract of December 11th, and the lease bearing the latter date, the part taken by the field force of the Washington office of the Bureau of Mines is that the field force receives and gages the oil on the various leases, keeps account of the amount, and the grade, and the record of prices, [507—424] and certifies these; the office force audits all of the accounts on both sides of the ledger in this contract. The headquarters of this particular division of the field

(Testimony of H. Foster Bain.)

force are at Taft, California; the Bureau of Mines plays no particular part in connection with the work at Pearl Harbor, which is handled by the Bureau of Yards and Docks, Navy Department.

Dr. Bain recalls an invitation for bids on lands in Section 2 Section 6 and Section 25, Naval Reserve No. 1, which invitation was sent out November 30, 1921; the decision to lease those particular strips of ground was made at the October conference, 1921, to which he has testified; the Bureau of Mines was directed to take steps to consummate leases; a list of the names of the principal companies operating in that district was submitted and was approved by the Secretary of the Interior, Mr. Fall, as the ones to whom offers should be made. When the announcement was made that these lands would be leased, various other people asked for the privilege of bidding, and were given the privilege of bidding. The actual details as to the leasing were handled by the Petroleum Division of the Bureau of Mines, in co-operation with the general land office. The bids that came in for the strip in Section 6 and Section 25 were not satisfactory, and it was recommended that that ground be not leased. The lease in Section 2 was made; the October conference, to which witness refers, is that at which Admiral Robison was present; witness has no recollection as regards whether that matter was taken up with Admiral Robison after bids were received; there was discussed with witness the transaction which resulted in the delivery

(Testimony of H. Foster Bain.)

to the Government of a quitclaim deed from White and Coffin to Section 2 in Reserve No. 1, the discussion being with Secretary Finney, Mr. Ambrose and Mr. Cotter; [508—425] witness is not positive whether he discussed it with Secretary Fall or not; the recommendation made by the Bureau of Mines was to the effect that if a lease was given in return for that quitclaim deed, it should not extend beyond the center of the section, and should cover only the unleased portion of the north half, rather than the whole section. The witness knew at the time of the transaction in which lease was given to Ramsey, as assignee of the United Midway Oil Land Company, and to the Pan American Company, in Section 1, which leases bear date December 14, 1921; he discussed that transaction with Mr. Finney, and again he is not positive whether he personally discussed it with Mr. Fall or not; he did not personally make any recommendation on the subject, but the Petroleum Division was called upon to arrange a program of development and royalties for these leases when they were written; the decision as to whether a lease should be made or not was not made in the Bureau of Mines; witness is not positive whether the Bureau made any recommendation as to what lands should be included in those leases. Witness recollects a discussion in the Petroleum Division as to the advisability of leasing the rest of Section 1; he had a discussion with Mr. Ambrose and some of the other engineers who were on duty at that time, and they

(Testimony of H. Foster Bain.)

pointed out to Dr. Bain that, as the information then available indicated, the southern half of Section 1 would be so far down the dip that a lease on that would not be worth much of anything, so that if the Secretary decided to lease the whole of Section 1, as a matter of fact he was not leasing very much of value except the little northern part.

At the October conference, already testified to, in the general summary at the close of the conference, Secretary Fall said to the whole conference, and asked confirmation of those present, as to whether he had the matter straight in his [509—426] mind, substantially this: "If we lease these strips it will decrease the gas pressure in the strips next adjacent and it will mean that we must progressively lease further and further to the extent of the sand," and the representatives of the Bureau of Mines present stated that that was their understanding and interpretation of the facts; in a discussion with Mr. Ambrose and the other engineers in regard to Section 1 above referred to, this matter was referred to in connection with this additional leasing in Sections 1 and 2, but just where and when and in what words, the witness does not remember.

The witness knows Mr. Mark L. Requa, who is a mining engineer, resident in San Francisco, and was the active man in the Nevada Petroleum Company, and who served as head of the Oil Division in the Fuel Administration during the war; witness has read the so-called "Requa Report" with

(Testimony of H. Foster Bain.)

respect to Naval oil reserves, made in 1916; he discussed that report with the men in the Petroleum Division, and with Admiral Robison, Mr. Finney and Secretary Fall; he cannot fix the date, but it was during the progress of the matters he is testifying regarding, and, while not positive, he believes it was prior to December 11, 1922; that would be his best recollection; the Requa Report thus referred to, the witness identified as a paper shown to him, dated San Francisco, California, December 16, 1916, and the same was marked Defendants' Exhibit "UUU," for identification. Witness also identified a communication dated November 30, 1923, addressed to the Hon. Reed Smoot, Chairman of Committee on Public Lands and Surveys of the United States Senate, and a communication dated November 7, 1923, addressed to H. Foster Bain, Director of the United States Bureau of Mines, Washington, D. C., and testified that the last mentioned was received by him, and the first mentioned was sent by him, to Senator Smoot, and that that was done in his line of duty. Counsel for the plaintiff and [510—427] defendants agreed in open court on the authenticity of the said document, and the same was thereupon marked Defendants' Exhibits "VVV" and "WWW" for identification.

Dr. Bain recalls the communication dated August 27, 1921, from the American Oil Engineering Corporation, addressed to Secretary of the Interior, which is Plaintiff's Exhibit No. 55; that communication came to his attention, having come to his office

(Testimony of H. Foster Bain.)

from the Secretary's office; witness asked Mr. Safford who was the administrative assistant to the Secretary, whether it required any answer, whether he should just file it, and there is a memorandum on that letter, with Mr. Safford's initials, reading "Just file"; Dr. Bain examined that communication at the time it came to him, and he has in mind the proposition therein contained in general terms; the Bureau of Mines was not asked for a decision on that subject. He did not give consideration to the proposition contained in that letter prior to any action thereon; any consideration he has given to that subject has been later; he is aware of the fact that in that letter reference is made to a similar letter written under date of September 27, 1920, to the then Secretary of the Navy, Mr. Daniels, copy of which witness recalls having seen; he had *never* informed of any action taken by the Navy Department in 1920 or 1921, or at any other time, on that subject.

As to the subject already referred to in the testimony about an arrangement with the pipe-line companies to exchange crude for fuel oil, covering the months of November and December, 1921, the witness testified that at the time the Navy asked that that matter be taken up in the fall of 1921, the oil coming from the various leases was being sold and the money was being turned into the miscellaneous receipts of the treasury; the Navy wanted to get possession of this oil, and [511—428] had started correspondence with the Department clear back in

(Testimony of H. Foster Bain.)

January with that in view, and it was decided at the October conference immediately to make arrangements to take oil in kind; the oil was then flowing to the four pipe-line companies, the Standard, the Union, the General Petroleum, and the Pacific-Associated group; the Bureau of Mines, following the October conference, and by direction of the Secretary, made arrangements with each company by telegraph, to take the crude oil in exchange for fuel oil, and hold the latter subject to disposition by the Navy; this arrangement was on a basis which substantially amounted to equivalence of price, though not always expressed in that form; by the expression "equivalence in price" is meant \$1.10 worth of crude oil to be exchanged for \$1.10 worth of fuel oil, the fuel oil price being fixed by the market price at tidewater, and the crude oil price by the posted price of the District. None of these four companies was asked to bid for, or submit a proposition to take, oil from what might be called the other companies' territory, and they did not so bid; there was no newspaper advertisement for bids, or competition preceding this arrangement; there was no newspaper advertisement nor bids for leasing a part of Sections 2, 6 and 25, about which the witness has already testified; the various persons who were invited to bid in that instance were notified by letter, or if they came to the office, as some of them did, they were given copies of the proposals there.

Some months ago witness had calculations made

(Testimony of H. Foster Bain.)

showing the average royalty received by the United States from oils in Naval Reserve No. 1, this average being on the whole amount up to the date of that calculation; the results found are thus summarized: Up to the end of 1923, from all the oils produced in all leases in force on Naval Reserve No. 1, the [512—429] Government had received an average royalty of a fraction over 31 per cent; excluding the royalties received from any wells in Reserve No. 1, except those coming under leases with the defendant Pan American Petroleum Company, dated June 5, 1922, and December 11, 1922, the average royalty received by the Government was, as of that time, 28 per cent; according to a calculation made by the Bureau of Mines, later than the foregoing, and during the year 1924, after there had been some interruption of operations as a result of the investigation, the average royalty received by the Government under the June 25 and December 11, 1922, leases, was 26 per cent. To the best of witness' recollection, the average royalty received by the Government from all the leases in Naval Reserve No. 2, is 18 per cent, or very close to it.

At the beginning of the direct examination of the witness H. Foster Bain, there was placed on a blackboard in the courtroom, in view of the Court, a large map, and the same was exhibited to the Judge, with the statement that for the record a smaller map, copy thereof, would be produced and offered in evidence; at this point such smaller copy was produced and offered and received in evidence,

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(Testimony of H. Foster Bain.)

counsel for the plaintiff consenting, and the same is appended to this statement of the evidence as Defendants' Exhibit "XXX."

Toward the close of the direct examination of the witness Bain, it was stipulated between counsel for the plaintiff and for defendants, that the witness had testified before Congressional Committees in 1921, 1922, 1923 and 1924, and it was agreed that the printed reports of such said hearings correctly reported his said testimony, and that if it should be made to appear hereafter that any of his said testimony is material in this case, the same may be received in evidence from the printed reports of the said hearings. [513—430]

Cross-examination.

On cross-examination Dr. Bain testified that he is not clear in his recollection as to when Secretary Fall first made any statement to him about the use of royalty oil in the construction of storage tanks; he is not clear whether the Secretary said anything to him about it before the October conference or not, but he did mention it at the October conference; the Secretary was away from the end of July to October 17, or thereabouts, and the witness got back about October 20th, and he is not sure that the Secretary ever spoke to him on that subject before that time; the October conference which the witness attended could not have been on October 22, the date fixed by a letter of Secretary Denby, drawn by Admiral Robison, under date of October 25, because the witness did not return to Washing-

(Testimony of H. Foster Bain.)

ton until Sunday, October 23; there must have been another conference which he did not attend; the conference attended by him was held before the October 25th letter, called the "Policy Letter," was written, and at that conference, to the best of witness' recollection, witness recalls the first reference by Secretary Fall to oil tankage being filled with royalty oil, as a consideration; at this conference Admiral Robison and Secretary Fall were present; Secretary Fall said that he had been considering a plan for using the royalty oil for tankage; witness does not remember that he said that Mr. Doheny had agreed to make a bid; he said, referring to an earlier conference with Mr. Doheny, he was satisfied that Mr. Doheny would make a bid; he did not at that time say that he was expecting a communication from Mr. Doheny on the subject; at that time there was a discussion as to how the matter could be handled; the discussion did not go to the extent of how we could get a contractor to do it; the discussion then all ran to the point of making a direct exchange with an oil company, it was only after witness got the [514—431] detailed plans from the Navy, and saw what an amount of engineering work there was concerned in it, that he became satisfied it was necessary to bring an engineering firm into it; at the conference late in October, details were not discussed as to actual storage or place, but there was some mention of details; at that conference it was said by some present, substantially, though the witness is not certain that it was defined

(Testimony of H. Foster Bain.)

in this way, that the pressing need of the Navy would be for current use oil, and that the tankage project should wait upon an excess of royalty oil; from the time of that conference and all through the month of November, witness had conferences with Secretary Fall on the subject, and some time in the month of November the Secretary told witness that he was expecting a communication from Mr. Doheny, which would give Mr. Doheny's engineers' ideas of the cost of this tankage, and so when the letter of November 28, 1921, was handed to witness, he understood it to be the letter that Mr. Fall had been expecting from Mr. Doheny; Secretary Fall did not at the time tell witness that he was expecting a communication from Mr. Doheny, or when he handed the witness the communication, say to witness that it would be necessary no doubt to grant further leases to Mr. Doheny; the letter was taken by the witness for reference, and he read it; witness saw in the November 28, 1921, letter the language: "Therefore, were we to construct the tanks and furnish the oil on the basis of our being paid for both tanks and oil in royalty crude oil produced from lands within the naval reserve and to be leased to us it would require a return to us in royalty oil," of so much, but he did not give that matter any consideration at all; it passed right over his head; he was thinking only of the estimate, and that letter was put by him with some other papers, Mr. Jurs' estimate and some others, in [515—432] the safe in his office, and was not in the general files of the

(Testimony of H. Foster Bain.)

Department, and when the general files were certified to the Senate Committee, this letter was not certified over with them, and was subsequently found; witness does not recall Secretary Fall saying anything to him about any further leases to the Pan American Company in connection with this project; Secretary Fall had the matter up quite actively with the witness between November 29 and December 1, the date he left, because Dr. Bain's Bureau was to be charged with whatever duties there were in connection with it in his absence; the witness does not remember ever having seen the letter of November 29, 1921, Exhibit 34, to Admiral Robison; he may have seen it, but he does not remember it; as to the November 28th letter, Dr. Bain's only recollection on that is that at the time Secretary Fall went away, he handed Dr. Bain the estimate made by Mr. Doheny's engineers; that was the only thing that stuck in his mind, and that is the letter of November 28th; before he went away, and at the same time he handed witness this paper, Secretary Fall gave witness instructions that when the Admiral and the Navy Department sent over the plans, "we should proceed to develop a method of carrying out the Navy's wishes in this matter."

At the conference of late October, there was a discussion as to whether the obtaining of storage by using royalty oil instead of money would constitute an exchange or whether it would constitute a sale and purchase, and Secretary Fall gave it as his opinion that it would be a true exchange, at that

(Testimony of H. Foster Bain.)

conference mention was made of the fact that the Navy had no money appropriation for such purpose, and that the Navy could not build this tankage out of any appropriation it had, and would have to use royalty oil for that purpose if it was going to do it at all; Secretary Fall had already thought it out, and announced that in his opinion this would be a true exchange; [516—433] he did not go through any line of reasoning, but simply said that was his judgment; there was no suggestion made there that there be any inquiry from any Government officer as to the legality of the proposition; some such phrase as "Would it be legal?" was used in that discussion, and Secretary Fall said he thought it would. The witness, upon being asked whether before Secretary Fall left, on December 1st, Mr. Cotter told the witness that the Pan American Company would make a bid on this tankage proposition, answered that he cannot fix the date exactly, but Mr. Cotter told him that along about that time; as to when Admiral Robison told witness he had been in touch with Mr. Doheny, and that Mr. Doheny would make an offer on this work, the witness can only say "along about that time"; he cannot fix the exact date; when witness asked Secretary Finney to write the letter of December 16, 1921, being Exhibit 67, the bid he had in mind was a bid on the Pearl Harbor project; he was not ready at that time to take bids; he had not then shown Mr. Doheny's office, or any representative of the Pan American Company, plans and specifications; as

(Testimony of H. Foster Bain.)

to what he meant by saying that Mr. Doheny's bid would be handled by the New York office, to the best of his recollection, Mr. Cotter told him that the matter would be handled by that office; he had been in touch with Mr. Cotter before December 16, on the subject, just when he does not know, but it may have been almost any day then; the difficulty in attempting to fix dates is this: Pearl Harbor as a project was mentioned before the actual bringing over of plans and specifications, and witness does not remember the exact date that the word "Pearl Harbor" first came into the conference; it was after that came into the discussion, whether it was before December 1 or November 29 or not, that witness was in touch with Mr. Cotter on the thing and learned that when it was handled by his company [517—434] it would be handled through the New York office; he cannot be any more definite than to say then that it was about that time that he talked to Cotter on the subject; he cannot say whether it was before December 1st, when Secretary Fall left Washington, or after; he cannot say when the Pearl Harbor project was first mentioned, whether it was October 25 or after, except that the Pearl Harbor project was first mentioned before Secretary Fall left the city, and witness also saw Mr. Cotter after Secretary Fall left Washington; he did not see, to his own knowledge, Cotter before that time about the Pearl Harbor project; it was after December 1st that Cotter told witness that their bid would be made in the New York

(Testimony of H. Foster Bain.)

office; as to what the witness meant in the letter of December 16, in the statement that he would like to get the Pan American bid into some sort of shape before he went west, the word "bid" is an inaccurate word, that should not have been used; it is difficult to say what word should have been used; he was trying to formulate a plan and find out a proposal upon which people could bid, and he was seeking help as to how to formulate a proposal upon which they could bid, and he was seeking help from the Vice-president of the Pan American Company, who was then located in Washington; Mr. Cotter had been in the Interior Department under a previous administration, and the witness knew him quite well, and Cotter was acting then either as an officer or attorney, or both, for the Pan American Company, and had headquarters in Washington, and witness saw Cotter; as to the time when he saw him, from the correspondence he would judge that the Pearl Harbor matter was discussed with Cotter after December 16th, and before December 23d, on which date witness wrote Mr. Fall; on or about that date, too, witness asked Mr. Cotter to arrange for witness to meet Mr. Anderson when he came West; between December 16 and [518—435] December 23, Cotter gave witness ideas as to the form of contract, but the witness does not remember in detail what ideas were suggested, because there were so many plans that changed backwards and forwards; he cannot now give any idea what Cotter's suggestions were; referring to the state-

(Testimony of H. Foster Bain.)

ment in letter dated December 23, 1921, from witness to Secretary Fall, Exhibit 70, that, "I am going west primarily to consult with the Standard and such other companies as we may determine in conference between us should be taken into account, with regard to the tankage plan of the Navy. I have seen Mr. Cotter and he is getting for us additional data now," this was additional data which Cotter hoped to get with regard to the cost of various sorts of elements that entered into the specifications which Dr. Bain had by that time, that is, the first general specifications; also it was necessary to get data as to the cost of transportation of oil from the coast to Honolulu, and things of that sort; Dr. Bain left Washington December 28, 1922, for the West, and Mr. Cotter traveled with him as far as Three Rivers, New Mexico, and there the witness got off to see Secretary Fall; Mr. Cotter at that point just stepped off the train and greeted the Secretary, and got back on the train. Twenty-four hours later the witness proceeded to Los Angeles, where he was met by Mr. Cotter in the Southern Pacific station; the project was discussed between the witness and Mr. Cotter on the way West, but as to whether he got any further light or data from Cotter at that time, he does not remember the details; upon arrival in Los Angeles, Mr. Cotter and Mr. Anderson met the witness, and they attended a football game that afternoon, and the next day he met the officers of the Pan American Company at their offices, there being a number of the officials of

(Testimony of H. Foster Bain.)

the company present; the witness' recollection is not clear that Mr. Doheny gave a positive [519—436] answer as to whether a bid would be submitted on this matter at that meeting; his recollection is that it was laid before the Board of Directors there, and that when the witness came back, the following week, Mr. Doheny gave him the positive answer. At this time witness had a bundle of blueprints showing in merest outline the things the Navy wanted at Pearl Harbor; there were some typewritten pages accompanying this, and he is not clear now whether they were only the pages which were sent from the Navy, or whether he had added a page or two as a suggested outline; those that came from the Navy consisted of what might be called skeleton specifications, to go with the skeleton plans; witness had in the meantime thought about what ought to go into the project, or be covered by it, but whether he had reduced them to writing at the time he does not recall. One suggestion made by the witness at that time to the Pan American Company was that the probable plan of handling the matter would be that an oil company would take the crude oil and make the fuel oil exchange, and as to construction, arrange in some way to take the construction company's oil off of its hands, or to pay the construction company cash in return for the crude oil that the oil company would get; that was only one suggestion, and the suggestion to use the engineering company independently was not made in any detail at that time, because it

(Testimony of H. Foster Bain.)

was an idea developed more in detail after witness talked with Mr. Storey in San Francisco.

The witness had gotten in touch, as he testified on direct, with Mr. Gano Dunn of the J. G. White Engineering Company, and made an appointment by which Mr. Dunn came to Washington and saw witness there, shortly before witness left for Three Rivers; on December 28 witness wrote Mr. Dunn, quoting to him a part of the Judge Advocate General's opinion touching the question of exchange, which letter, as Plaintiff's Exhibit [520—437] 245, was read in evidence, in part, as follows:

PLAINTIFF'S EXHIBIT No. 245.

"My dear Dunn:

Referring to our conversation this morning as to the right of the Interior Department to exchange royalty oil produced on Naval Petroleum Reserves for fuel oil and to erect storage for fuel oil, for your information I wish to quote you from a letter to the Secretary of the Interior signed by the Secretary of the Navy, dated December 14, 1921. The Secretary of the Navy writes as follows": (Then follows quotation from the said letter to the Secretary of the Navy, which in turn quoted the Judge Advocate General's opinion already offered in evidence.)

By the foregoing exhibit, witness fixes this conversation with Mr. Dunn as the day before he left Washington for Three Rivers; in that conversation Mr. Dunn asked, "Is there authority?" for ex-

(Testimony of H. Foster Bain.)

changing oil for tankage; Mr. Dunn is not a lawyer, so the witness quoted to him the Judge Advocate's opinion that there was authority. Under date of December 29, 1921, Mr. Dunn from New York, wrote Mr. A. W. Ambrose, Bureau of Mines, Washington, D. C., letter which was read in evidence as Plaintiff's Exhibit No. 246, and is as follows:

PLAINTIFF'S EXHIBIT No. 246.

My dear Mr. Ambrose:

I have this morning your letter of yesterday, for which I am very much obliged, and I return as promised one of the extra copies made in our office of the specifications for the Sandwich Islands job, which I hope will be of use to you.

I appreciate the attention you and Director Bain have given to the tentative proposal I have made on behalf of the J. G. White Engineering Corporation. I hope to amplify this proposal on the Director's return from the Coast and if he brings back any new conditions, to modify it to suit those conditions. [521—438]

Wishing you a very happy New Year, I am,

Sincerely yours,

GANO DUNN,
President.

The witness would not call what Mr. Dunn had submitted a "tentative proposal"; Mr. Dunn had told witness in conversation that his company would be glad to consider this matter, and that at

(Testimony of H. Foster Bain.)

the proper time he would make a proposal, but there was no paper or anything of that kind then.

At the conference with officers of the Standard Oil Company in San Francisco in January, 1922, neither Mr. Sutro nor anyone else there said that the Standard could not bid on the construction; Mr. Sutro did not go that far; witness handed the Standard Oil Company officials all the extracts from the Judge Advocate General's opinion; the copy was on the table when Mr. Black, of Ford, Bacon & Davis, came into the Standard Oil Company's office.

Witness met Mr. Weil at the second conference with officials of the General Petroleum Company, and Mr. Weil expressed very grave doubts, graver than Mr. Sutro; the latter apparently had not made up his mind; Mr. Weil asked why the opinion of the Attorney General was not obtained; witness does not remember Mr. Weil saying that his company would not consider it unless the opinion of the Attorney General was obtained, but would consider it if the Department got that opinion; witness would not say Mr. Weil did not say that; Dr. Bain remembers telling Mr. Weil that he did not care to get the Attorney General's opinion, stating to him substantially what he has already testified, that the Department itself was entirely satisfied with the opinion; that the Navy Department was satisfied it had legal authority to go ahead, and the objections stated in witness' direct testimony to raising any question about it, about getting a technical [522—439] lawyer in on

(Testimony of H. Foster Bain.)

the thing; when witness returned to Washington, he asked Secretary Finney if it would not be a good plan to get the Solicitor's opinion; asked whether he thought that the Solicitor was a technical lawyer, and that he was one of those "go-ahead" fellows who would give a good opinion, the witness replied, "I thought he was the Solicitor of the Department"; he made the suggestion that it might be well to take the opinion of the Solicitor of the Department, and the opinion of the Attorney General; he made that suggestion prior to making the contract of April 25, 1922, in conversation with Secretary Fall, early in the transaction; he reported to Secretary Fall the opinions of Mr. Sutro and Mr. Weil, as they had been expressed to witness, making this report a few days after he wrote to Judge Finney on January 25; he is not certain at that time he suggested to Secretary Fall that it would be well to get the opinion of the Department of Justice, as he had already done so in the previous October or November, that is, witness raised that question at the very first, as to whether it should be done; if it were done then, of course it could not have the slightest embarrassing feature to Mr. Doheny.

About March 4, 1922, witness received a letter from Col. Black, of Ford, Bacon & Davis, Exhibit 95, enclosing copy of Mr. Sutro's opinion, and he replied in his letter of March 4, Exhibit 96; as to whom he gave his opinion to for study, witness passed it over to Secretary Finney, and also, his recollection is, to Secretary Fall; he did not have

(Testimony of H. Foster Bain.)

anyone else study it; he did not report the result of the studies to Col. Black, unless that was done verbally, his recollection is that he told Col. Black that the Department stood on its ground, that it had adequate legal authority to do the work.

The statement in the letter of Dr. Bain to Col. Black that "I think we will be able to arrange a form of bidding which will meet the principal objections he (referring to [523—440] Sutro) has in mind," witness says meant the form of bidding that was sent out March 7; at that time Secretary Finney and witness were formulating the proposals that went out on March 7; in the judgment of witness, these proposals met the objection that the Navy could not legally exchange royalty oil for tankage; as to what attorneys witness had reference to in his statement in his letter to Col. Black reading, "I am sure we can back our plan with good legal opinion since the matter happens to have been examined by attorneys outside as well as inside of the service," Mr. Dunn told the witness that the attorneys of his company had told him that it was legal; witness does not remember Col. Black giving him copy of opinion of Davis, Auerbach & Cornell, New York lawyers, against the legality of the plan; he has a hazy recollection of Col. Black saying something about having taken their opinion, and that it was adverse.

Regarding the statement in the letter to Col. Black, "I will give you the results later," Col. Black was down to witness' office in Washington

(Testimony of H. Foster Bain.)

once or twice, and talked about the thing, and witness sent Black the proposals of March 7. Before the bids came in, Mr. W. F. Herrin, legal adviser of the Associated Oil Company, discussed with witness legal questions regarding the plan; Mr. Herrin and Mr. McLaughlin saw the witness and Secretary Fall when Mr. McLaughlin arrived in Washington, a week or ten days before the bids were opened; Mr. Herrin had a discussion with Secretary Fall as to whether the plan was legal or not; he did not at that time say in Dr. Bain's presence that he would not permit the Associated Company to bid, except conditionally on Congress approving the plan; the witness is clear on that; Mr. McLaughlin did so advise witness before the bids were put in, and before April 15, 1922, he knew that Mr. Herrin had given that opinion to Mr. McLaughlin, [524—441] and that something would be done in the bid to provide for that, but he did not know what particular form that would take; the witness did not know that there was no intent to go to Congress at that time to get any such ratification.

Dr. Bain knew, from a conference with Mr. Storey and Mr. Sutro had with him in Washington in March, 1922, that the Standard Oil Company would not undertake to bid on the construction; the persons or corporations in the oil industry to whom he had sent invitations consisted of the Associated Oil Company, who he knew would bid only conditionally, the Standard, who he knew would bid not

(Testimony of H. Foster Bain.)

at all on the construction, and the Pan American, and that there would be but a single bid from an oil concern covering the whole thing; from correspondence, and from conversation with Mr. McLaughlin, Dr. Bain knew that the Associated Company would not bid on the No. 1 Reserve oil; that they were only interested and only expected to bid on No. 2 oil, but what they might finally decide to do, he could not say. Referring to Dr. Bain's letter of March 23, 1922, Exhibit "YY," to Mr. McLaughlin, in which it is stated that it is entirely possible that even if someone else gets the contract, the Associated can purchase the oil from Reserve No. 2, that is exactly what they did; except for some gathering lines that carried oil to the pipelines, the Pan American Company had no lines, and no refinery in this territory; the Pan American Company had not then much oil territory; they had either all or part of Section 6, just outside of the reserve No. 1, and portions of Sections 1 and 2, and it would be necessary for the Pan American Company to market the oil it took from the Government, if it took any in exchange; having in mind that the Pan American Company might be the successful bidder, witness suggested in his letter to Mr. McLaughlin that if it was, Mr. McLaughlin's company could no [525—442] doubt secure this royalty oil.

On March 30, 1922, Dr. Bain wrote a letter addressed to Mr. A. C. McLaughlin, Associated Oil Company, San Francisco, which, as Plaintiff's Ex-

hibit 247, was read in evidence and reads as follows:

PLAINTIFF'S EXHIBIT No. 247.

My dear McLaughlin:

We are having a good many inquiries from San Francisco with regard to particulars of the project in view and I suspect that these come indirectly from you. The whole matter is one which is not easy to settle, and I believe it will be worth your while to be here on April fifteenth and prepared to stay two or three days. It will take some little time to compare the bids and perhaps there will be slight differences of opinion to be adjusted where a personal conference would smooth things out quickly. The Secretary is very anxious to get the matter closed out as promptly as possible.

It also occurs to me that it is entirely possible that even if some other company is the successful bidder on the project as a whole you might be able to make a private arrangement to get control of the crude oil from Reserve No. 2, which I gathered from our conversations is the thing you are most interested in. With these two possibilities in view I feel warranted in making the suggestion that you plan to be down here. At any rate we can have a good visit and lay the foundation for future co-operation.

Cordially yours,

H. FOSTER BAIN,
Director.

(Testimony of H. Foster Bain.)

The foregoing letter was written after Dr. Bain's conference with Secretary Fall referred to in his direct examination, in which the Secretary expressed his anxiety to get the thing closed, and his impatience that it would have to wait until April 15; after the above letter was written, and after the receipt by witness of telegram already in evidence, stating that Mr. McLaughlin would start for Washington on a certain date, Mr. McLaughlin arrived in Washington, and after he had been there several days, and in the meantime had been working on his bid, the witness learned that he was not going to make a bid except with some sort of reservation about Congress' consent.

Immediately preceding the writing by the witness of Exhibit [526—443] 247, in a conversation with Secretary Fall, the latter said he would like to see the thing put through, if necessary, by private negotiation, by calling these people to Washington and cleaning it up and getting rid of it; he asked the witness if that could be done, and Dr. Bain advised him it could not; as to the date of that conversation, it must have been immediately preceding the letter to Mr. McLaughlin last above quoted. As regards letter of April 12, 1922, Exhibit 102, Dr. Bain did not call Secretary Fall's attention to any misstatement in that letter; he was not conscious of any; the statement therein, "I am therefore holding up the proposed contracts indirectly by taking abundant time for the consideration of bids, etc., with the hope that meantime

(Testimony of H. Foster Bain.)

this amendment may be adopted and that we may obtain the results suggested by the large saving which I am confident will accrue," is the Secretary's language; the first contract, the Mammoth contract, at that time had been signed, and the Secretary was holding it up; the Mammoth contract had been let by private negotiations, without bids; bids had not come in from the Pan American, and witness had just advised the Secretary that they could not come in and be considered until April 15; at the time the letter was written, the proposed contracts included, first, the Mammoth contract, which had already been signed, and which the Secretary was holding in his desk at that time; the other contract was the one which had not yet been made, and could not be made because the bids were not in.

In the Bureau, the work was done on Sunday analyzing the bids received April 15; in those days, work was done frequently in that Bureau on Sunday. No word was received from Secretary Fall to hold those bids up until the thing could be sent to Congress.

At the time Secretary Fall sent his letter to Secretary Denby, dated April 12, he said to witness that he had not a [527—444] doubt in the world that Denby could get that legislation if he would just ask for it, and that it would simplify matters very greatly; witness understood by that that the legislation would enable the selling and buying of oil; witness did not understand that the proposed

(Testimony of H. Foster Bain.)

legislation would be a ratification of the contracts about to be made; to his mind, the language, "Provided, further, that storage of fuel oil from Naval Reserves may be provided either by exchange of oil for such storage," etc., is clear to the witness; further, it was Dr. Bain's understanding when that letter was written that the foregoing phrase, if enacted into law, would amount to a ratification of an exchange contract; at the time, the thing he was thinking about was the part referring to an authority to sell the royalty oil for cash, and to use the cash for construction contracts; he paid no attention to the above quoted phrase in it; at that time, Dr. Bain knew that the Mammoth oil contract had been signed by Secretary Fall, but he is not sure whether a copy had then been delivered to the other party to the contract.

Secretary Fall left Washington April 13, having told witness to open the bids, check them, and make a report to him; the witness' understanding then was that he did not have the right to independent action, but that that was reserved to Secretary Fall; it was our understanding that we were to recommend; witness cannot remember the name of the representative of the Foundation Company who came to witness' office, and from whom witness gathered the impression that that company was going to cooperate with the Standard Oil Company in some way in the making of a bid; this representative, the first time he came in, asked for plans and specifications, and said that his company

(Testimony of H. Foster Bain.)

desired to make a bid on the work; a day or two later, the plans and specifications [528—445] were sent him; witness identified a letter from the Foundation Company, dated March 22, 1922, acknowledging receipt of plans and specifications, and states that that comports with his memory of about the time the representative of that company called; he does not recall ever hearing from him again. (The letter referred to, upon request, was shown to counsel for defendants, and hereafter appears in evidence as Exhibit "YYY.")

Dr. Bain thereupon identified letter dated April 15, 1922, written to Mr. A. I. Findley, Editor of the "Iron Age," New York, as having been written by him, and the same was received in evidence as Plaintiff's Exhibit 248, and reads as follows:

PLAINTIFF'S EXHIBIT No. 248.

Dear Mr. Findley:

I very much appreciate your coming around and am particularly sorry to have missed your call yesterday. I would have liked to talk with you a little about that Pearl Harbor business. We are not permitted to give out any definite information at present concerning the engineering features. The work under consideration, is part of a general policy developed between the Navy and the Department of the Interior. You will recall, doubtless, that some years ago considerable areas in the oil fields were set aside for naval reserves. Owing to the fact that the Government title was not com-

plete to all of the lands studies have shown that there has been serious drainage of the Government property. In two California reserves at least \$8,000,000 worth of oil has been taken from under Government lands by neighboring wells. To prevent similar and larger losses in the future the Department is now leasing lands where necessary to secure offset wells and proposes to take the oil from below ground in such situations and exchange it for fuel oil which shall be put in storage for the Navy. The crude oil at the wells is not, of course, available for naval use and if put in storage there would be serious losses through evaporation, so it is first being exchanged for fuel oil, where evaporation losses are very light, and this in turn put in storage at points convenient for the Navy. As an incident to that the oil companies making the exchanges have been taking sub-bids preparatory to making proposals for furnishing the storage. The particular piece of work to which your attention was called is a part of the confidential war preparations of the Navy, though naturally when contracts are let and construction begins there will be some necessary publicity. It is impossible to give any information on any particular project, as the details are being handled by the Secretaries alone.

I have appreciated very much your cooperation in this matter, and I will be very grateful if you will not quote either me or the Department in mak-

(Testimony of H. Foster Bain.)

ing use of the information given you above.

Cordially yours,

H. FOSTER BAIN,

Director. [529-446]

The witness identified letter dated April 15, 1922, as having been written by him to C. J. Stark, "Iron Trade Review," Cleveland, Ohio, which, as Plaintiff's Exhibit No. 249, was read in evidence as follows:

PLAINTIFF'S EXHIBIT No. 249.

Dear Mr. Stark:

Sometime since you will remember an exchange of telegrams between us with reference to some oil storage plans for the Navy of which you had heard. I am unable to give you very much in detail, but there is no reason why you should not have the following information:

The work under consideration is part of a general policy developed between the Navy and the Department of the Interior. You will recall, doubtless, that some years ago considerable areas in the oil fields were set aside for naval reserves. Owing to the fact that the Government title was not complete to all of the lands studies have shown that there has been serious drainage of the Government property. In two California reserves at least \$8,000,000 worth of oil has been taken from under Government lands by neighboring wells. To prevent similar and larger losses in the future the Department is now leasing lands where necessary to

(Testimony of H. Foster Bain.)

secure off-set wells and proposes to take the oil from below ground in such situations and exchange it for fuel oil which shall be put in storage for the Navy. The crude oil at the wells is not, of course, available for naval use and if put in storage there would be serious losses through evaporation, so it is first being exchanged for fuel oil, where evaporation losses are very light, and this in turn put in storage at points convenient for the Navy. As an incident to that the oil companies making the exchanges have been taking sub-bids preparatory to making proposals for furnishing the storage. The particular piece of work to which your attention was called is a part of the confidential war preparations of the Navy, though naturally when contracts are let and construction begins there will be some necessary publicity. It is impossible to give any information on any particular project, as the details are being handled by the Secretaries alone.

I have appreciated very much your cooperation in this matter, and I will be very grateful if you will not quote either me or the Department in making use of the information given you above.

Cordially yours,

H. FOSTER BAIN,

Director.

By the phrase in the last-quoted exhibit, "It is impossible to give any information on any particular project, as the details are being handled by the Secretaries alone," he could not give out anything without the Secretary's authority; of course,

(Testimony of H. Foster Bain.)

he was acting with the Secretary, and Robison was acting with the Secretary; Secretary Fall was not at that time conversant with all the details; it is impossible to say how [530—447] much of them he was conversant with.

The "Iron Trade Review" had telegraphed from Cleveland prior to March 28, 1922, for information, and witness replied to that publication by telegraph, which he either sent or framed for the Secretary to send; witness identifies the letter from the "Iron Trade Review," dated Cleveland, March 29, 1922, and testified that that letter substantially states the telegram which had been sent that publication in the circumstances above narrated. Said letter was addressed to Secretary Fall, and, as Plaintiff's Exhibit 250, was read in evidence, as follows:

PLAINTIFF'S EXHIBIT No. 250.

Dear Sir:

Acknowledgment of your wire of yesterday, asking us not to publish at present, for military reasons, the information concerning the opening of bids by the navy for fuel oil tanks at Pearl Harbor, Hawaii, herewith is formally made.

We wired you last night as follows:

'Your request not to publish information regarding oil tanks for navy Pearl Harbor acknowledged. Matter will not be published on grounds given by you. Appreciate your prompt release this matter when advisable.'

(Testimony of H. Foster Bain.)

We were glad to honor your request in this matter and trust that as soon as the circumstances permit, that you will release this news to us as it is information of considerable value to the steel industry.

Sincerely yours,

THE IRON TRADE REVIEW.

C. J. STARK, Editor.

Plaintiff's Exhibit No. 251 is telegram, fully quoted in the foregoing letter.

Replying to the question, "Was there any instruction to you not to give out information about the Mammoth contract and the bidding on the Pearl Harbor project?" Dr. Bain testified that there was the original request of the Navy to treat all those matters as confidential; up to the time that request came through his office, he does not recall that there was any instruction of secrecy; witness was furnished the names of 12 or 14 sub-contractors to the Associated and Standard Oil Companies, and knew that part of the matter would be taken up [531—448] with some or all of them; the furnishing of material, the purchase of pumps, for example, could be taken up with the sub-contractor or sub-contracting concerns without telling them where and what the project was; he does not recall whether the list of approved sub-contractors from the Bureau of Yards and Docks was furnished the Foundation Company or Pittsburgh & Des Moines Steel Company; the latter was on the approved sub-contractors list; a set of plans and specifications was furnished the Pittsburgh-Des Moines Company, after the first of

(Testimony of H. Foster Bain.)

April, the exact date not being recalled; witness knew before bids were opened that the White Engineering Company had up with the Pittsburgh-Des Moines Company the question whether the latter would sub-contract for tankage; witness' best recollection is that he sent the list of approved sub-contractors to every bidder, and that recollection is that the list was sent to the Standard Oil Company of California.

In the files, there should be a letter of transmittal to the companies to which the list was sent; just prior to the time bids were opened, Dr. Bain knew that from the Pan American Company there would be a complete bid, and that that company would submit an alternate bid. Secretary Fall did not request witness to arrange the invitation for bids dated March 7, so as to permit the Pan American to make an alternate bid; witness is clear on that; he is quite sure that Secretary Fall never made any such request to him; he knows that Gano Dunn made a request, which was that the alternative be made as wide open as possible in the sense of giving the bidder as much latitude as possible; that subject was also discussed with Mr. Cotter before March 7; Mr. Cotter said he wanted an opportunity to put in an alternative bid, but did not tell the witness that he was going to put in an alternative bid that involved the preferential right to leases on the whole Reserve, [532—449] and witness is quite clear that he never knew that any such alternative bid was to be put in until he saw it when the bids

(Testimony of H. Foster Bain.)

were opened; there was no such bid put in; he is wrong about that, that is a mistaken recollection; there was a bid conditioned upon a preferential right to lease throughout the whole reserve, but that was not put in the contract; witness did not know that any such alternative proposition was to be put in until he saw the bids opened, and did not know the nature of the alternative bid that either Mr. Cotter or Mr. Dunn had in mind. He could frame an invitation for an alternative bid, as he did frame it, without the slightest knowledge of what alternative these men had in mind, because the alternative which was discussed by Dr. Bain and Mr. Dunn was an alternative under which it would be possible to bid on the contract in case it was impossible to get sub-contracts covering the whole construction; Mr. Dunn explained to witness that he could get firm sub-contracts on perhaps 80 or 90 per cent of the work, but that there were some other elements to be sub-contracted for, on which he, or anybody else, might have to bid a unit price, because they did not have full information; and therefore witness framed an alternative request in the invitation for bids, in such a way that if any bidder found it impossible to make a lump sum bid on the whole job of construction, the bidder would be permitted to put in a lump sum bid, based upon firm sub-contracts for not less than $66\frac{2}{3}$ per cent of the whole work, and another form of bid to take care of the work remaining over and above the $66\frac{2}{3}$ per cent; that is the alternative he had dis-

(Testimony of H. Foster Bain.)

cussed with Mr. Dunn and Mr. Cotter. The second alternative permitted by the invitation was this: In the earlier requests it had been insisted that a bidder say how many barrels of fuel oil he would give against one barrel of crude oil of a certain gravity, and in the later [533—450] one the bidder was permitted to bid fuel oil against crude oil in a proportionate number of barrels, if he could make a firm bid that way, and the Pan American availed itself of that alternative; they told him that they were able to make a lump sum bid because they had gotten the full information.

The invitation for bids framed by witness, as far as alternatives were concerned, was not intended to invite an alternative proposal that involved leasing any part of the reserve; witness had no information prior to the opening of the bids from any concern that an alternative proposal would be submitted involving the leasing of the reserve; nothing had been said to witness by Secretary Fall about an intent, in connection with the contract proposed to be made for Pearl Harbor to lease any portion of the reserve to any of the bidders except that witness had proposed, in both sets of proposals, that the Government would agree to give leases enough to bring the production up to a certain minimum amount. In all the invitations for bids that the witness had put out, he stated, substantially, what royalty oil the Government would expect to run per annum from the leases, and that if production from the existing leases ran down to such an ex-

(Testimony of H. Foster Bain.)

tent as to unduly extend the time of the performance of the contract by the Government, the Government would, in the discretion of the Secretary, grant further leases to bring the amount of royalty oil to the approximation stated in the invitation for bids; so that in those invitations it had been suggested that if the Navy royalty oil was not running to pay for this job within a fair time, some leases would be given so that there would be more royalty oil; that had nothing to do with drainage; that had to do with paying the contractor; witness does not know what arrangement was made between the Associated Oil Company and the Pan American Company, after the contract of April 25 was made for the sale of royalty oil by the Pan American; he [534—451] is not certain that arrangement was consummated in May, 1922; Dr. Bain left Washington to go West to arrange for delivery of the accumulated royalty oil late in April or early in May. He was in San Francisco early in May, and he was not then arranging for the delivery of that oil to the Associated, as vendee of the Pan American; he did not know then who the vendee was; as regards giving out information, witness, to the best of his knowledge, governed himself according to the Department of the Interior memorandum of April 13, 1922, Exhibit 114. He was familiar with the fact that Secretary Fall communicated the contents of that memorandum to Secretary Denby; he cannot fix the date on which information concerning the date of award of the

(Testimony of H. Foster Bain.)

Pan American contract was first given out, without reference to the record; that is a public matter here. He was present at discussions regarding whether information should or should not be given, which were participated in by Secretary Finney, Mr. Safford, Admiral Robison, and Mr. Swanson, the witness' secretary. The witness has no particular familiarity with advertisement and issuance of invitations for bids for other public work.

When he went to Three Rivers and met Secretary Fall there, he told Secretary Fall the oil companies he was going to take this matter up with, and the Secretary agreed; the witness saw Mr. Cotter and Mr. Dunn frequently between February 15 and April 15; but he does not remember seeing them almost daily; Mr. Cotter was stationed in Washington during that period, but he spent a great deal of time in New York; witness saw these gentlemen in New York not more than twice between February 15 and April 15; he had a great many interviews with Mr. Dunn and Mr. Cotter between February 15 and April 15, but he could not give the number; shortly after February 15 the first subject of discussion was the difficulty of bidding under the invitation that was then outstanding, and Mr. Dunn [535—452] and Mr. Cotter explained to the witness that unless the specifications were altered, they could not bid; the specifications were then altered; he did consult with Mr. Dunn and Mr. Cotter regarding the form of the invitations of March 7, 1922, before it was in final shape, and was

(Testimony of H. Foster Bain.)

issued, in the sense of showing them the plans and asking their approval; he discussed with Mr. Dunn, as an engineer, the sort of proposals it would be necessary for an engineering firm to have, as the matter of covering the possibility of not being able to get lump sum bids on everything involved in that alternative proposal; but not in the sense of drafting, or joint drafting, or anything of that nature; after the issuance of the invitation for bids dated March 7, there arose a question of how bidders should state the ratio of fuel oil to royalty oil, and Mr. Cotter submitted a ratio that his company was about to use in its bid, and Ambrose, with witness' knowledge, tested that ratio to find out if it was sound; the first ratio was found to be uncertain; witness is not certain as to the origin of the first ratio; it might have been originated in the Bureau of Mines, or it might have originated with Mr. Cotter alone; he does not think it was originated by Mr. Dunn; that was brought to or discussed with the Bureau as to whether it was a ratio they could work with; it was found to be uncertain; there were certain cases in which it failed to work; they finally did bring witness a ratio which seemed to test out for all quantities of crude oil as against fuel oil; there was also considerable discussion between them and witness as to this proposal sum which should go up or down in barrels of oil, depending upon the price of oil and upon the quantities of construction and extras; witness does not know that there was ever discussed the par-

(Testimony of H. Foster Bain.)

ticular form of bidding providing that the proposal sum in barrels of oil should be one which might go up and down from day to day, so as to take care of these [536—453] differences in prices; he does not know that the words "proposal sum" were used in discussions prior to the opening of the bids, or that that idea crept in; but that the amount which should be paid in oil should vary with the market price of crude, the market price for fuel, and the difference in gravity of the various amounts delivered from the leases was under discussion, and what language would cover that case; but Dr. Bain's recollection is that the actual language that was adopted he never saw until the bids were opened; no official of the Government discussed in the presence of witness the advisability of divulging, in the sense of proposals which should be printed as an advertisement in the newspapers; Secretary Finney insisted that bids should be taken upon this contract and arrangement; as regards whether any method was taken to notify any other construction concerns other than the Foundation Company or the Pittsburgh-Des Moines Company, there was Ford, Bacon & Davis, J. G. White & Company, and the correspondence with regard to the Stuart Engineering Company; witness discussed the matter with the president of the Stuart Engineering Company; he submitted the matter to oil companies other than those he has mentioned in his testimony. Secretary Finney stated his position with regard to the taking of bids early in the negotia-

(Testimony of H. Foster Bain.)

tions, at the very beginning; his impression is that it was before the letter of December 9 from the Navy was received.

The question of what leases should be agreed upon in the letter of April 25, 1922, Exhibit 125, was taken up with the witness before that letter was delivered; the purpose of those two leases was to supply more royalty oil to the contractor, to anticipate the fact that the Government would have to take care of drainage on these particular pieces of land; witness was asked whether in the letter written by him November 7, 1923, [537—454] to Senator Smoot, which he identified on direct examination, he did not state that the sole purpose of Exhibit 125 was to supply royalty oil to the contractor, and answered that he does not recall what was written in there on that point; thereupon, counsel asked him whether in that letter he did not say this: "These original leases were in order to increase the amount of royalty oil that accrued and would become applicable on the contract, and by so much shorten the time the contractor would need to wait to secure a return of the money he needed to construct immediate storage facilities"; and the answer was in the affirmative, witness adding that that did not exclude another idea, though, and the other idea was in mind at the time. The preparation by the witness of the above-referred to letter of November 7, 1922, to Senator Smoot, took about three weeks; in writing that, evidently he overlooked the other idea that was in mind in making leases made

(Testimony of H. Foster Bain.)

under the April 25, 1922, letter; as regards what Mr. Cotter said as to the reason why he wanted these leases, he said that he wanted something to show his company as a direct benefit; that in his judgment the contract as made was not one out of which his company could make any money; that all they got out of it was the use of their ships for carrying oil a certain number of months, and that all the rest was to be done at cost, and he did not want to go before his company and present a contract for signing unless he could show something as a result. At this time there was never mentioned Mr. Doheny's letter of November 28th; Cotter, in addition, stated what he has above set forth, adding that the preferential right was worthless; in response to which, witness "joshed him" and did not agree that it was worthless; witness thought it might become very valuable; in a general way, witness had an idea how much petroleum there could possibly be recovered from [538—455] Reserve No. 1; the Bureau of Mines had not made any estimate at that time, but he had the Geological Survey estimate; the Geological Survey has made two estimates on that, one of two hundred and fifty million and another of one hundred million barrels; by the time of the conversation between Mr. Cotter and witness, the preferential right had been restricted to the eastern half; in the witness' view, the eastern half was more valuable than the western; witness has no knowledge as to whether the award letter, dated April 18, was delivered to Mr.

(Testimony of H. Foster Bain.)

Cotter on the morning of that day personally; he was not present when it was delivered, and has no recollection on the subject; Dr. Bain received at his office on April 18 letter from Mr. Dunn of the White Corporation, dated April 17, 1922, addressed to witness, and reading (Exhibit 252):

PLAINTIFF'S EXHIBIT No. 252.

Dear Mr. Bain.

As per program, Mr. Cotter and I are going down tonight and will be at your office about nine o'clock tomorrow Tuesday morning.

Very truly yours,

GANO DUNN,

President.

Witness does not remember a letter dated April 17, 1922, from Mr. Dunn to Mr. Ambrose, reading (Plaintiff's Exhibit 253):

PLAINTIFF'S EXHIBIT No. 253.

Dear Mr. Ambrose:

Mr. Cotter has just told me of your telephone conversation. He and I are both coming down tonight and will be in Mr. Bain's or your office tomorrow Tuesday morning about nine o'clock.

and does not know what the telephone conversation therein referred to was; he was not present when Mr. Ambrose's report was rendered on the bids, and has no information regarding it, but knows by the record it was rendered; he learned the contents of the Ambrose report when he go back from Pitts-

(Testimony of H. Foster Bain.)

burgh; he saws Messrs. Cotter and Dunn early in the morning of the 18th; on the opening of the bids of April 15, it appeared at once that the Standard Oil Company had bid only on exchange of fuel oil for royalty oil; that was not [539-456] the thing the Government was particularly interested in, it wanted the whole job done, and that ruled that bid out at once; it appeared immediately when the bids were opened that the Associated Oil Company had bid only for Reserve No. 2 oil, which would extend the contract for a long period of years, and that they had bid only conditionally upon the submission of the matter to Congress; that did not rule that bid out; witness had it in mind to submit the matter to Congress if that company had bid the lower amount; that was discussed there in the Secretary's office, that if it had been the lowest amount, we would promptly have taken it up with Congress; it was apparent the moment the bids were opened that their bid was not the lowest amount on the proposal sum, but there was a consideration as to whether the changes specified in the Associated Company's bid amounted to anything, and there was the question how it would be worked out on that extra length of piles and differences in amount of dredging whether that would influence the Associated Oil Company as against the Pan American bid; witness does not remember that the Associated bid on the extra length of piles was exactly the same as the bid by the Pan American Company; he simply remembers that there were these things that had to be considered; it did

(Testimony of H. Foster Bain.)

not take the rest of Saturday and all day Sunday to work out that matter; they did not put in all their time on that thing; after witness returned to Washington on April 18, he saw both Mr. Ambrose and Mr. Finney; as to the telegraphic correspondence of that day, some of those telegrams Secretary Finney told witness he had sent, and he read them to witness; he does not recall which was which; he does not know what time Secretary Fall's approval came in, or what time in the day the award was made; he knows that Ambrose started for Three Rivers April 20, and he knows of the [540—457] telegram to go ahead, dated April 23. In the meantime, work was being done on the drafting of the contract; this was being done in the office of witness, and he was called in on it from time to time, to discuss particular points; the contract very closely follows Proposal B, and it was not a difficult matter to draft it in that form, so that the matter was ready when Secretary Fall could send his O. K., and when the Navy should give it approval; the latter came to witness from Admiral Robison.

Dr. Bain does not recall having seen upon his return from Alaska in the summer of 1922, letter of July 28, 1922, from Mr. Cotter, as vice-president of the Pan American Company, to Secretary Fall, Exhibit No. 140; he discussed the suspension of drilling with Secretary Fall, but Secretary Fall told witness that a request for that suspension had come from the Pan American Company, and there was discussed suspension of drilling not only in the Cal-

(Testimony of H. Foster Bain.)

ifornia reserves, but in the other reserves, and in the Osage Nation, and determined upon the general policy on account of the tremendous over-production of oil at that time. In letter to Senator Smoot of November 30, 1923, witness stated that a memorandum from Mr. Doheny came to his possession in August, 1922; that was an evident mistake in the date, he knows now that it was in October; that evidently is a mistake because he checked it up when he showed that memorandum to Admiral Robison, and he knows he did not have it long in his possession before. As to where he got the data upon which to base the statement made in his above mentioned letter, to Senator Smoot, that "the most careful consideration was given to a memorandum proposal submitted by Mr. E. L. Doheny to the Secretary in August, 1922," the proposal came to witness from the Secretary; witness does not know how long it was in the Secretary's possession; when the Secretary gave it to Dr. Bain, he told him to take it up with the Admiral; witness telegraphed to [541—458] Mr. Cutler and asked for certain data and made some calculations on that data, and then saw Admiral Robison, and discussed it; that was in the first half of October; he is clear now that that was the time when he had that paper in hand. As to the statement in the aforementioned letter from the witness to Senator Smoot, reading: "This proposal was handed me by the secretary for study and I at once took up with the Bureau of Engineers concerned in Washington and California, the va-

(Testimony of H. Foster Bain.)

rious problems connected with it. I also promptly consulted with Admiral Robison, the special representative of the Secretary of the Navy, and began tentative formulation of a contract along the lines indicated," that is what the witness did in October, he formulated a tentative plan in his mind; the plan set forth in Mr. Doheny's memorandum was very far from plain enough; in the first place, it did not offer the Government enough; in saying he was formulating a plan, witness means he was thinking over the matter as to what should be asked for and what should be gotten, and what form the negotiations should take; he took the subject up with Admiral Robison very shortly after the Secretary handed him the memorandum, and Admiral Robison said that his personal desire was to go ahead, but that he would take it up with his associates in the Navy, and see if they were prepared to do anything of this sort; by "going ahead" was meant providing a larger amount of storage for the Navy, and giving a lease upon a substantial part of Reserve No. 1; in the conversation with Admiral Robison, it is the recollection of the witness that Pearl Harbor was only one of the places mentioned; there were mentioned Pacific Coast points, as a general phrase; Admiral Robison was talking about further storage at Pearl Harbor and other Pacific Coast ports to be constructed under a new contract, and the [542—459] giving of a lease on the reserve as a consideration for that, and witness formulated plans in his mind in very general terms. He had reached no

(Testimony of H. Foster Bain.)

conclusion about it, except as to how he would go at it, before the second memorandum from Mr. Doheny came in; that memorandum came to witness through the Secretary's office, but he does not know how soon after its date on November 6; after receiving this second memorandum, he had conferences with Admiral Robison from time to time, starting almost immediately, and Admiral Robison gave witness in general terms information as to what was being done in the Navy in connection with consideration as to whether the policy should be adopted or not saying that it was being considered by the different branches of the Navy and that a decision would be reached later. To the best of Dr. Bain's recollection, he took the matter up with representatives of the Pan American Company only after a formal request, dated November 29, was received from the Navy Department; the matter was being discussed with Admiral Robison, and turned over in the witness' own mind, from some time early in October until after November 29; the letter of November 29 was the first positive go ahead order on that contract received by the Interior Department; then witness got in touch with Mr. Cotter and, through him, with Mr. Doheny and Mr. Anderson, and men of Dr. Bain's own staff, and Admiral Robison.

In the negotiations that followed, there were many questions of which that relating to royalty was only one; there was a very heated discussion over the number of sections in the west half of the

(Testimony of H. Foster Bain.)

reserve which should be opened to immediate drilling, and there was a discussion over the number of strings of tools which should be kept in operation, over the items under which the Navy or the Government might order the lessee to drill in what we called among ourselves the [543-460] reserved part of the west half; over the terms of abandonment; over whether we would under any consideration give notice to the Pacific Oil Company to open up the inner reserve; there were a great many things like that; witness had Mr. Ambrose make some royalty calculations to guide him in his negotiations with regard to the royalty. When the split was reached with these men, witness, with Secretary Fall, in his office, named or suggested a scale of royalties that the Government would think right; prior to that time, he did not have all of the tabulations he has spoken of; that was gradually developed. The representatives of the Government started with the royalties on the strip in the north part of Section 2 as a basis for negotiations, the royalties there being $12\frac{1}{2}$ per cent to 35 per cent of oil of over 30 degrees Baume; that lease, which had been bid for, and which the Pan American Company had been the successful bidder for, was taken as one of the bases for discussion; there were also original bids on the north strip of Section 1, and the bids that had been received on Sections 25 and 26, which had not been considered satisfactory; his recollection is that the General Petroleum bid on Section 25 was only for the regulation royalty; by this time

(Testimony of H. Foster Bain.)

we also had the Belridge royalties, which were higher than those in the north strip of Section 2, there being a different system of brackets.

In these negotiations, Admiral Robison wanted to start with $14\frac{1}{2}$ per cent, rather than $12\frac{1}{2}$ per cent, and to that Mr. Anderson did not agree; witness compared the royalties that were suggested by him with the regulation royalty which was suggested by the other side, but he did not say they compromised in between them somewhere; we compromised on the whole list, that is, not in between them as regards [544—461] a particular bracket; they did not go through and split the difference on each bracket, but made a general run or step-up that was different from either of the suggested ones; witness made a calculation to see whether or not the schedule that was finally suggested as a compromise could bring better or worse royalties in the long run than the regulation royalties; and "in our judgment" the schedule adopted was better than the regulation royalty schedule, because of "our estimate" as to what the average yield per well would be; he does not recall what the estimated average yield per well was, but remembers that that was calculated and that entered into the adjustment; he does not remember the detailed figures at this time, but they were all gone into carefully at that time, and calculations made; by taking the total production of all wells that produced for a substantial part of a month, and dividing that by the number of wells, and then dividing the result by the number of

(Testimony of H. Foster Bain.)

days in the month, there is arrived at the average production per well per day per calendar month, and that average production is divided in levels, and to the first 20 or first 50 barrels, whatever the first bracket is, is applied the lowest percentage, and to the next bracket between 20 and 50, or whatever it is, is applied the next percentage, and so on; when there has been exhausted the average of one well for one day, say 200 barrels, there is then applied the royalties in the different brackets to that proportion of the total production which is represented by the proportions of a single well; it is a contemplated mathematical proposition, and there are tables for calculating it, which are used. In speaking of the average production per well per day, a very high level, like a thousand or two thousand barrels, is not taken by itself and the royalty calculated all the way up, but that is lumped with the small wells, and then there is [545—462] obtained the average of a well, and then the brackets are applied. Witness knows that the larger number of the wells in Reserve No. 2 have been leased to persons who had equities under the Leasing Act, and that the upward limit in those leases is 25 per cent; the only leases that were granted by competitive bidding in Reserve No. 2 are a small number, not over a dozen, recently granted; a comparison of royalties in No. 2 with royalties in No. 1 is not a fair one. There are very considerable differences to be dealt with in entirely different situations; there are very great differences, and it cannot be taken at its face at all.

(Testimony of H. Foster Bain.)

The Pan American Company has not developed the land in Reserve No. 1 with any speed since the lease of December 11, 1922, was entered into, because in view of the depression, the Government has not pushed them to develop with speed; they drilled every well they were asked to drill up to the time of the receivership; it is not good business to drill under conditions as they have existed up to this time, even in those parts of the reserves where there are no restrictions; the price of oil is still very low, and there is still a flood of oil on the market; if the Navy had not been anxious for the storage facilities, the lease could have waited.

In the autumn of 1922, there was discussion of competitive bidding for leases in Reserve No. 1 only in this sense: That it was recognized that it would be first necessary to exhaust the possibilities of negotiation with the Pan American Company for the eastern half under the preference right; at the time when the break came over the royalties and other things, the Government officials seriously discussed among themselves how else they would get at this and who else they would go to. There was a discussion between Secretary Fall and the witness of a possible break, not as to whether it would be thrown open to bidding, but as to what next negotiations to [546—463] take up, or whether any would be taken up.

Upon being asked whether he recalled a conversation at which Secretary Fall and Admiral Robison, shortly before November 29, 1922, at which

(Testimony of H. Foster Bain.)

Admiral Robison verbally announced the decision of the Navy as to the leasing of Reserve No. 1, he has a recollection of a conference at which Secretary Fall, Admiral Robison and the witness were present, at which the Admiral said, "It is all right; go ahead," but whether that was with reference to Reserve No. 1 or the Wyoming lease, he does not remember; the Wyoming lease had been made in April, 1922, but he is now trying to remember things that occurred two or three years ago; witness remembers, and so told counsel for the Government in Washington on this subject a few weeks ago, that Admiral Robison authorized the Interior Department to go ahead, and that witness knew it; Admiral Robison said to witness words to this effect: "Well, the matter is settled; we are going ahead with the additional storage. The Navy Department badly needs additional storage at Pearl Harbor. It is not certain how long I may hold my present position. Administrations change, and if the matter is postponed, the acquirement of storage may never be accomplished. It has been decided to go ahead at once with an additional project for 2,700,000 barrels at Pearl Harbor," but witness cannot be positive now that this was said in Secretary Fall's office, or in the presence of Secretary Fall; witness does not recall that after that statement Secretary Fall turned to Admiral Robison and asked him to have the Navy write him a letter on the subject, and he does not recall so telling plaintiff's counsel; the last quoted statement of

(Testimony of H. Foster Bain.)

Admiral Robison was not with reference to the Mammoth lease, but had to do with this.

The term "Published field price" in the industry means [547—464] the price at which the company agrees to take any amount of oil which may be offered at the well on that particular day, or until further notice. The witness' understanding of the agreement in the December 11, 1922, contract with the Pan American Company, that it would carry oil to tidewater free, is this: That if there is ever a difference in the price of crude of a certain grade, as between the Naval Reserve and tidewater (San Pedro, for example), that the Government will then get its crude carried down to San Pedro, California, and sold at the San Pedro price, without charge for bringing it down; that the Government crude will be carried down there free, and will be sold to the company, or the Government get credit for it at the San Pedro price, rather than the Elk Hills price. Mr. Cotter first insisted that Secretary Denby be made a party to the contract of April 25, 1922, saying that the Pan American Company would not go with Proposal B unless Secretary Denby was made a party, nor unless the lease for certain small areas was guaranteed within 12 months. Witness, upon being asked, "He (Cotter) did not couple the joinder of Secretary Denby then with proposal A but with proposal B, or did he say that the company would not sign any contract unless Secretary Denby was a party?" answered, "I am not certain about that."

(Testimony of H. Foster Bain.)

Witness identifies memorandum dated February 4, 1922, as having passed through his hands to the Secretary of the Interior, and the same was marked Plaintiff's Exhibit No. 254, and is the identical memorandum which is Defendants' Exhibit "U-2."

Dr. Bain does not recall any instructions from Secretary Fall concerning the giving out of information or withholding of information as to the lease of December 11, 1922; the question of what publicity should be given this was taken up [548—465] at once and discussed with Admiral Robison, and at or about that time the Navy Department gave out a news story. Witness identifies as having been written by Mr. Ambrose to Mr. Campbell of the Bureau of Mines at Bakersfield, letter dated January 16, 1923, and states that the footnote in handwriting was placed there by himself and the said communication was thereupon read in evidence as Plaintiff's Exhibit No. 255, and is as follows:

PLAINTIFF'S EXHIBIT No. 255.

My dear Campbell:

I have your letter regarding the confidential nature of the recent lease to the Pan American Petroleum and Transport Co. I think it would be well to review for your information some of the general details of this contract.

The Secretary of the Navy wrote the Secretary of the Interior advising that they wished to enlarge immediately the storage facilities at Pearl Harbor

and did not wish to wait until the completion of the present project and its payment from the present royalty oils, and requested the Secretary of the Interior to co-operate with representatives of the Navy Department in providing immediately for additional storage facilities at Pearl Harbor and other places upon the best terms that could be made. Accordingly, an agreement was made with the Pan American Petroleum and Transport Co., which is considered very confidential, and a copy of the agreement relative to storage facilities, etc., has not been sent you because it contains figures on the amount of storage, its location, etc., which the Navy considers confidential and of military value and is very anxious that it not be published. It requires, according to the best estimates, an early advancement by the Pan American Company of between \$12,000,000 and \$15,000,000 and they will have to take their chance on getting payment for this from the royalty oils from the reserves.

You have a copy of the lease which practically gives them a lease on the eastern half of the reserve and requires that they drill necessary offset wells on the western half of the reserve in case the Government feels that drainage is taking place from wells on the bordering territory. Obviously, the Navy is not anxious for any more to be said about this than is absolutely necessary, and the Secretary has directed the representatives of the Bureau in Washington to maintain the whole matter confidential as this was requested by the Navy.

As a result we have referred all inquiries to the Navy Department and are letting them make whatever announcements or give whatever information they desire, and I suggest that in so far as possible your office should take the same attitude. I appreciate that this puts you in a somewhat difficult position, but inasmuch as the Naval reserves are considered a part of the National Defense, and as long as the Navy requests us to keep this information confidential, I think that is the best way for us to keep in the clear in the matter.

The press announcement of the Navy was to the effect that the Pan American would drill such wells as were necessary immediately to prevent drainage, and I understand [549—466] that they are not planning to drill additional wells on the eastern half of the reserve at the present prices of oil. The Government, of course, does not desire that they maintain the reserve indefinitely when the price of oil is better than it is today, as we are required to pay 5% interest on their advancements. Inasmuch as their bonds bear 8% of course they obviously would be anxious to liquidate expenditures as soon as possible.

With this information before you I think that you should still not give the lease out for public inspection, but I see no harm in advising people that they will drill necessary offsets on the west half of the reserve and have a right to drill on the east half.

Very truly yours,

A. W. AMBROSE.

(Testimony of H. Foster Bain.)

(In ink:) They are to drill at once wells to offset the gas wells in Sec. 36 but these are not planned to go beyond the gas sand now despite the right of the P. A. to so drill them if they wish.

Asked whether he understood that the Navy did not desire the fact of the lease (in December, 1922) to be given out, the witness answered, "They didn't desire the lease itself to be given out." Mr. Ambrose, who wrote the last above quoted letter, was in court yesterday; he was the chief petroleum technologist, and is the gentleman who has been referred to in the testimony as having been present on various occasions, and have to do with many matters.

(Thereupon, it was agreed between counsel for plaintiff and for defendants that the said Ambrose had been in attendance upon the trial in this court for a week previous to yesterday.) Note: "Yesterday" was October 31, 1924.

Redirect Examination.

The defendants offered in evidence letter dated New York, March 22, 1922, identified by the witness Bain during his cross-examination, which, as Defendants' Exhibit "YYY," was thereupon received in evidence, and reads as follows:

(Testimony of H. Foster Bain.)

DEFENDANTS' EXHIBIT "YYY."

Bureau of Mines,
U. S. Government,
Washington, D. C.

Gentlemen:

In connection with the proposed construction work in Hawaii, which we understand is to be paid for in crude oil at a price to be agreed upon, said oil to be delivered somewhere in California.

We have an assurance of a source of disposal of this [550—467] oil and, therefore, request a set of plans and specifications for the work proposed with a view to making you a formal tender on it.

Thanking you for your courtesy in this matter, we are

Very truly yours,
THE FOUNDATION COMPANY.
(Sgd.) H. J. DEUTSCHBEIN,
V. P. & Gen'l. Mgr.

The witness testified that it was in response to this last quoted letter, and a previous conversation with a representative of the company, that he caused to be sent to the Foundation Company a copy of the plans and specifications; after that letter, dated March 22, was received, and until the bids were opened on April 15, witness did not have any information from the Foundation Company indicating that that company would not submit a formal tender as in the March 22 (last quoted) letter stated.

Mr. Doheny's letter of November 28, 1921, to

(Testimony of H. Foster Bain.)

Secretary Fall, was kept in the safe in witness' office, with the Jurs' estimate, the contracts themselves, the bonds securing the contracts, the plans and specifications, and the letters which led up to the contracts; they were all tied together; these papers were kept in the safe until some time during the Senate investigation, when, with other papers, they were put in what is called the "Naval Petroleum" files in the Bureau; all of these papers were kept in the safe, and not a part of the general files.

With respect to the information that the Pan American Company had through Mr. Cotter and Mr. Dunn about the terms of the alternate bids that were requested, that company did not have any information from the witness or from the Government, so far as he knew, that the Associated Company did not have; witness tried to give Mr. McLaughlin the same information; he does not recall that anyone else asked him about the terms of the alternate bids; the invitations to bid were [551—468] sent to the persons mentioned in the witness' testimony, in exactly the same form that they were sent to the Pan American Company.

As regards information which the Pan American Company had at the time the bids were submitted, which enabled it to submit a lump sum bid, that company had no information that the witness knows of from him or from the Government that every other one of those concerns he has mentioned did not have; with regard to conditions at Hawaii and

(Testimony of H. Foster Bain.)

the dredging and work to be done there, prior to April 15, witness had placed the J. G. White Company, and the Ford, Bacon & Davis Company in contact with the Hawaiian Dredging Company, and he knew that both companies had had negotiations with Mr. Dillingham of that Company; that is the same Hawaiian Dredging Company whose name witness gave Mr. McLaughlin of the Associated; while he was turning over in his mind, between October 22 and the time when there was received the Navy's letter of November 29, 1922, the subject matter of Mr. Doheny's memorandum regarding the oil situation in California, he had other matters which he turned over in his mind. He was very busy. He was very far from devoting his entire time during that period to formulating plans with respect to the Pearl Harbor project.

As regards comparing royalties received in Reserve No. 1, and the average royalties received from Reserve No. 2, a direct comparison cannot be made between any sets of figures that involve averages without taking into account the source of the averages, and what they mean and what they imply. While at the time of the December 11 lease, in view of conditions and the large amount of oil that was being produced in California, the conditions in that part of Reserve No. 1, where the Pacific Oil Company's sections alternate with those owned by the Government, there was not any need of immediate [552—469] drilling or leasing on account of drainage; the Bureau of Mines was

(Testimony of H. Foster Bain.)

very far from considering that that could go on indefinitely; the Bureau of Mines had at that time proceeded with its studies on that subject, and had communicated to Admiral Robison its views, which were that from time to time it would be necessary to lease additional areas, and at any time the Navy might be called upon to defend something like 60 miles of boundary by drilling at once.

As regards the opinion of some New York lawyers he was asked about on cross-examination, and as to whether he ever heard the opinion of the law firm of Cravath, Henderson & DeGersdorff, with respect to the authority to exchange under the Act of June 4, 1920, the witness has not any clear recollection of that, as he did not consider legal matters his part of the work.

Before leaving Washington for Pittsburgh, on the night of April 16, 1922, witness had gone over with Mr. Ambrose the subject matter of the latter's report of April 17, in the "Memorandum to Secretary Finney," but the report itself was not then completed; that is, the language of the report; witness' present recollection is that at the time he left the city, Mr. Ambrose had not yet received a final answer through Lieutenant Keating on some of the matters with regard to construction.

The witness Bain having been excused, there was next offered and received in evidence the following documents:

Defendants' Exhibit "ZZZ," being a letter dated at Washington, July 18, 1923, addressed to the Secretary of the Navy and reading:

DEFENDANTS' EXHIBIT "ZZZ."

Dear Mr. Secretary:

I am enclosing for your consideration a copy of letter received from Mr. E. P. Campbell, Deputy Supervisor of Oil and Gas Leasing Operations in the California District. This letter explains a difficulty met in the field because of the confidential character of the contracts [553—470] entered into with, and the leases of, Naval Reserve lands granted to the Pan American Petroleum and Transport Company.

This Department assumes that in the making of contracts covering Naval Reserve lands and in supervising the construction and filling of petroleum storage it is acting as agent for the Navy Department. The Bureau of Mines is instructed that in the care of papers relating to these subjects it shall consider them as separate from those arising out of the Interior Department operations and refer to the Navy Department any request it receives for copies of such documents or for data not answerable from information previously released by the Navy. This attitude, as Mr. Campbell's letter points out, leads to embarrassing situations and to misunderstandings on the part of those who do not realize the nature of this information. Indeed it is possible that in safeguarding the details of

these contracts an unnecessary degree of secrecy is maintained.

In this connection I suggest for consideration:

- (1) The leading facts in Pan American contract No. 4800 were authoritatively published at time of execution and the California press featured the news at considerable length.
- (2) The larger California oil producing companies issue maps, excellent in execution, accurate in detail and closely up to date. A photostat copy of such map is attached. From some source the compiler has secured reliable information regarding the land included in the Elk Hills lease all of which is shown as controlled by the Pan American.
- (3) In the carrying out of its contract obligations the lessee is drilling numerous wells scattered, as to location, over the tract leased and dotting the hills with new and conspicuous derricks. These are known by all persons in touch with the oil industry in that district to be the property of the Elk Hills Petroleum Co., a subsidiary of the Pan American Petroleum Co.

To summarize: All but the intimate details of both contract and lease is already fully known to the industry. For the Bureau of Mines representatives to profess ignorance is a questionable advantage and may prove to be a definite injury.

I, therefore, ask if, in your judgment, it would be detrimental to public interest if the Bureau of

Mines permits its field representatives, when questioned on this subject, to give the legal subdivisions covered by such leases while referring inquiries regarding other details to the Navy Department.

Respectfully,

E. C. FINNEY,
Acting Secretary.

Defendants' Exhibit "A4," being a letter dated at Washington, July 23, 1923, addressed to the Secretary of the Interior, reading: [554—471]

DEFENDANTS' EXHIBIT "A4."

My dear Mr. Secretary:

Your letter of July 18, concerning the publication of information regarding leases of the Naval Petroleum Reserves, has been received and has been given careful consideration.

Since the military features of the national defense enter largely into considerations of this nature, it is believed that a degree of secrecy has surrounded the whole undertaking that is probably not necessary. There has been no disposition on the part of this Department, to treat these leases in their entirety so confidential, it being desired to retain as confidential only the amounts and location of the resulting petroleum products when placed in storage. It is realized that, being physically of some size, these cannot be really kept secret, yet it is not desired to spread the information that these reserves of petroleum products are in existence or are planned.

As a matter of fact, the contracts have been recorded as public documents and are, therefore, available to any citizen of the United States who will expend the trouble and funds necessary to obtain copies in the customary official manner.

In order that embarrassing situations which arise in the administration of these Reserves may be removed, it is considered by this Department that it would be permissible for the Bureau of Mines or its representatives to give to the petroleum industry or others legitimately interested therein, such details concerning these leases as may be pertinent except those mentioned above.

Very respectfully,
THEODORE ROOSEVELT,
Acting.

Defendants' Exhibit "B4," being a telegram dated at Washington, August 8, 1922.

DEFENDANTS' EXHIBIT "B4."

Evening Herald,

Los Angeles, California.

I have instructed representative Department to restrict drilling and production everywhere so far as possible and not to speed up any program except when necessary to preserve Government oil property from Salt Water incursions or Drainage by other parties oil situation in California very much affected by recent developments near Los Angeles upon which the Shell Company and Royal Dutch in their official reports are congratulating

their respective or common stockholders paragraph government production is only approximately five per cent total in United States and Government policy can hence have little effect on total production. I am extending drilling on Government permits granted under lease law on application permittees to utmost limit of statutory authority.

FALL,

Secretary. [555—472]

Testimony of Gano Dunn, for Defendants.

GANO DUNN, a witness called on behalf of the defendants, testified that he resides in New York and is connected with the J. G. White Engineering Corporation, having been President thereof since 1913. The J. G. White Engineering Corporation are engineers and constructors to design, advise, supervise, erect, construct and create all kinds of engineering structures for public utilities and other industrial purposes, doing business all over the world, except in England. He knows Mr. E. L. Doheny, having first met him February 16, 1922, in New York. Prior to that time he had never met Mr. Doheny or had any business with him or the Pan American companies. He knows Mr. Joseph J. Cotter, having first met him the latter part of January, 1922, in the office of Director Bain of the Bureau of Mines. The witness first met Director Bain in 1917 or 1918, when the witness was a member of the Nitrate Commission of the War Department, but only knew him slightly at that

(Testimony of Gano Dunn.)

time. The witness next met Director Bain when he went down to the latter's office in response to a telephone communication and other communications, and talked to him about this Pearl Harbor matter, the first communication having been on December 16, 1921. The witness met Doctor Bain on December 23, 1921. The first communication referred to was the telegram in evidence dated December 16, 1921, from the witness to Doctor Bain, which starts out by saying that the witness had received a message from Mr. Riccard through Mr. White. Subsequent to sending that telegram, he called Doctor Bain on the telephone but got no information about the Pearl Harbor project then because it was so confidential Doctor Bain said he could not talk about it over the telephone but when the witness went down in response to the appointment then made, Doctor Bain told him about it for the first time. He had taken with him one of the other officers of his company and Doctor Bain, it turned out, knew this other officer, so he said "I want to impress upon both of you that the matter I am about to talk about is one of extreme confidence. It deals with the Navy plans for the national defense. It is regarded by them as so confidential that the plans and specifications I am about to show you have been brought over to me by uniformed commissioned officers, and I want to impress upon you that this matter is really and truly confidential." Whereupon they both said they would [556—473] regard it as such. Doc-

(Testimony of Gano Dunn.)

tor Bain then explained that there was an arrangement between the Navy Department and the Interior Department whereby the Interior Department was acting on behalf of the Navy to bring about the construction of a great naval fuel base at Pearl Harbor. Witness had known about Pearl Harbor as a very great coaling station and was interested in it because also it was in the Hawaiian Islands where his company had constructed some great trans-oceanic radio stations for the Radio Corporation. He knew he could do good work there, so his interest was thereby increased. Mr. Bain produced a rather full set of specifications and some drawings, and asked witness to read them over, which he did very carefully. Doctor Bain asked him if his company would be willing to make a bid on constructing the works called for in those specifications. Doctor Bain explained, however, that the work could not be paid for in money; that it had to be paid for in oil. Witness told him, to his surprise, that witness' company dealt in oil; that it bought oil for the bunkering of ships and of necessity had to deal in it in that way; that it also purchased oil for fuel for certain steam and electric central stations which it had built, among them a station near Los Angeles, at Redondo, that it would consider putting in a bid on the basis of taking its pay in oil, but it was a new and complicated matter and witness would have to talk it over with his associates, and possibly some of his directors. Witness outlined to Doctor Bain the nature

(Testimony of Gano Dunn.)

of the work the White Company did; told him it never had taken a lump-sum contract in its history and never would, because it always held to the relation of agent to a principal and not contractor with an adverse interest to make a profit. Witness took away from that conference when he left, under injunctions of secrecy, the specifications that were there, and, he believes, one or two drawings, but not all the drawings that were involved. There were some that were yet to come over from the Navy Department.

Henry A. Lardner, Vice-President of the White Company, was the other officer of that company that the witness had with him at the time.

Doctor Bain was short of copies of these specifications. He had used up those he had and he was short of stenographers, and the witness made some extra [557—474] copies for him and for the White Company's own use, and sent one or two of them back. He talked the matter over with his associate officers, and also with several of the White Company directors, or members of its Executive Committee. They felt that the witness was too optimistic and enthusiastic about taking pay for a contract of that kind in oil, and they objected to his contemplating doing it.

At the time of this conversation on December 23d, Doctor Bain did not say anything to witness or give him anything relating to an opinion expressed by any legal officer of the Government.

He saw Doctor Bain on December 28, 1921, after

(Testimony of Gano Dunn.)

witness' consultations with his associates in the White Company at Doctor Bain's office in Washington.

When witness brought home the specifications and drawings, Doctor Bain later supplied some of the lacking drawings, and witness put his organization at work upon making an estimate of what the whole project would cost, which Doctor Bain very much wanted. That estimate was composed of a number of separate groups, tanks, foundations, wharves, and other things. Witness assembled those elements hurriedly and took the assembly sheet of that estimate down to Doctor Bain, and from that sheet made him an oral proposal of what the White Company would be willing to do. Witness told him that if the matter rested upon the White Company's willingness to accept payment in crude oil as he at first proposed, witness couldn't do it, and the White Company was out of it, but suggested that similar difficulty would be found with other people, and also told him that it seemed to witness an arrangement with an oil company whereby the oil that an engineering constructor would accept in payment could be taken off his hands and turned into cash, could be made; that that kind of an arrangement would work out for the best all around in constructing the facilities and in filling them with oil since, necessarily, it involved two separate and distinct kinds of bids. Doctor Bain said that he had about come to the same conclusion and therefore he allowed witness

(Testimony of Gano Dunn.)

to talk to him and to outline a proposal on the basis and on the assumption that while the White Company was to take its pay in oil, there was to be an obligation created by a parallel contract [558—475] between the White Company and whatever other company took the oil contract to take that oil off the White Company's hands and give them cash for it. On that basis, witness gave Doctor Bain an estimate that the job would cost \$2,380,000, and that the White Company would supervise the construction of it for a fee of ten per cent of that cost.

Witness did not tell Doctor Bain that the White Company would undertake to do the job for the two million plus that he had spoken of—under no circumstances; and witness did not even make a written proposal because he did not want to give Doctor Bain the idea that witness' proposal then was more than tentative. The specifications were incomplete, and he was anxious to avoid a misunderstanding by leaving Doctor Bain a written proposal at the time which could be only approximate on account of the incompleteness of the specifications.

Witness discussed with Doctor Bain very fully and completely the then character of the specifications. Doctor Bain thought the specifications were rather complete. They were composed of many pages of typewritten matter and very elaborate looking drawings, but witness pointed out that while there were many pages of descriptive matter and

(Testimony of Gano Dunn.)

in general pretty good specifications, there were some wide-open holes in them. The amount of excavation had not been determined; the depth of dredging had not been determined; and many other things had not been determined. So that an estimate could be with very great difficulty made, and only by allowing very large amounts for contingencies and unknown features.

The conference with Doctor Bain on the 28th of December was nearly, if not all the morning. Doctor Bain said that since witness' previous conference with him he had been thinking over the things they discussed, and those things had been confirmed by witness' then conference with Doctor Bain, and that the need of co-operation between engineering companies and oil companies had been very apparent; that the Department was already in relation with a number of oil companies and Doctor Bain was going to the Pacific Coast to take up this matter with the oil companies out there. [559—476]

Speaking of what oil companies, or class of oil companies, he was going to take it up with, Dr. Bain mentioned the Standard Oil Company, Associated Oil Company, the General Petroleum Company, and witness thought one or two others, but Doctor Bain did not mention Pan American Company or Mr. Doheny. With regard to class of these companies, or the reason for their selection, Doctor Bain said, "This job is so large and so complicated and has the elements of national defense so involved in it that it is not the kind of thing

(Testimony of Gano Dunn.)

that we can advertise by public bidding and call in all companies, great and small. Also, it is a job so large and important that only the companies that have a good organization and a considerable business are competent to handle it and to deal with it, and therefore I expect to take it up only with those companies who have a good standing and are large enough and well enough organized to carry the project through."

Witness next saw Doctor Bain shortly after he returned, after the middle or in the latter part of January, 1922. Prior to seeing Doctor Bain witness had received a letter from him from San Francisco, dated January 11, 1922. He did not send any written reply, but went to Dr. Bain's office and talked to his secretary and possibly to Mr. Ambrose about it, but there was no use in replying to it because Doctor Bain would be en route.

Prior to the time witness saw Doctor Bain in January, 1922, after he returned to Washington, witness had not seen Mr. Cotter or any other representative of the Pan American Company.

As to the meeting with Doctor Bain in January, Doctor Bain came back full of information and with a number of ideas on the oil exchange future. He told witness that he had had very satisfactory conferences on the Pacific Coast; that several of the oil companies had felt that the law under which the exchange was to be made was unsound or illegal, or something to that effect, but that there were several of the companies who were interested

(Testimony of Gano Dunn.)

in the work and whom he thought would put in proposals or bids when the time came. He confirmed what he said in his letter about having brought the matter of witness' proposed form of arrangement to the attention of Mr. Doheny and the Doheny officials, or the Pan American officials, out on the Pacific Coast, [560—477] and said they had expressed the view that cooperation between an oil company and an engineering company was essential to the success of this job because the oil companies generally did not have the engineering organization to handle so large and variagated a project as this in engineering and, correspondingly, the engineering companies did not have the skill and knowledge to deal with oil in the large quantities that were involved in this.

The Judge Advocate-General's opinion was furnished witness the day after or the same day that he had his last conference with Doctor Bain before the latter went to the Coast. One of the questions witness asked him was, "Is this exchange all right, is it warranted?" Because witness made the inquiry Doctor Bain said, "Yes, we have had an opinion from the Judge Advocate-General and from the legal officers of the Department of the Interior, and it is all right." Then Doctor Bain confirmed that by giving witness the opinion of the Judge Advocate-General in writing, which he got the next day—that is, on or about December 29, 1921.

Witness had a talk with Doctor Bain about getting the White Company's own attorney's opinion on the

(Testimony of Gano Dunn.)

subject. At that conference on December 28 when witness made his tentative proposal, or possibly at the previous conference, when he had inquired as to what authority there was for doing this work in this way, Doctor Bain told him of the Judge Advocate-General's opinion, and witness told Doctor Bain he would also get the opinion of the White Company's own counsel. Witness did not do this, however. When he found the directors on the Executive Committee were opposed to doing the job and taking pay in oil that meant that they would not entertain the liability of handling a large amount of oil, and therefore the question as to whether it was legal for them to be paid in oil became subordinate. It did not affect the White Company at all from that time on only to the extent that if the White Company had taken the kind of contract that witness suggested in the interview of December 28, there would have been current between them and the Government only such liabilities as might be required as working capital, amounting to perhaps \$50,000 or \$100,000, and that was too small an amount to give concern at that time. [561—478]

At the conversation of January, 1922, Doctor Bain introduced Mr. Cotter to the witness. In response to Doctor Bain's letter of January 11th from San Francisco, witness had called up the offices of the Pan American Company in New York to find when Mr. Doheny was coming east. He did not tell them the object of his inquiry

(Testimony of Gano Dunn.)

and did not get in touch with him as a result of that; but in one of his conversations with Doctor Bain on his return, he said: "Mr. Cotter is in my office now," and witness said: "Introduce him to me over the telephone," which Doctor Bain did, and at that time an appointment was made whereby witness went down to Washington and in Doctor Bain's office met Mr. Cotter. He had met him on one occasion previously, which he remembered when he saw Mr. Cotter's face. It was when Mr. Cotter was Secretary to Secretary Lane and witness was on the Inter-Racial Council.

Witness often tried to find out where Mr. Cotter's office was, but did not know. Mr. Cotter was so much in New York and so much in Washington, witness did not know which was Mr. Cotter's headquarters at that time. Mr. Cotter and the Pan American Company have offices at the same places, 120 Broadway, New York, and at Washington, in the Woodward Building. Witness has been in those places. He knows that Mr. Cotter lives on Illinois or Columbia Avenue in Washington. When witness met Mr. Cotter, witness asked him if Mr. Cotter's company would consider an arrangement involving a parallel contract with the White Company, agreeing to take off the White Company's hands any oil received in payment for construction work. He asked Mr. Cotter if he would accept a put from the White Company on his Company for that amount of oil. Mr. Cotter said they would consider it. There was some question in both

(Testimony of Gano Dunn.)

of their minds whether that was a relation which witness would seek with any of the other oil companies, or with all of the other oil companies, and, correspondingly, whether Mr. Cotter would seek an engineering relation with the other engineering firms that were interested in this matter. That question was not promptly answered but was discussed between them. It was a delicate question because if each of them was to have relations with all the others, then their relations could not be so intimate as to their hopes and fears and what the costs [562—479] were as involved in their bids and things of that kind. Mr. Cotter saw that and told witness that he would put it up to the officers of his company, and finally, after some time on the part of both of them, Mr. Cotter came back with an oral agreement that the Pan American Company and J. G. White Engineering Corporation would work together in this matter, and consequently the White Company no longer contemplated relations with other oil companies and the Pan American Company no longer contemplated arrangements with other engineering companies.

Prior to February 16, 1922, when witness first met Mr. Doheny, witness had received a communication from Doctor Bain in the way of an invitation for proposals. After the receipt of that communication there was a conference at the Pan American office at which there were present the witness, together with Messrs. Chilson and Williams, Vice-presidents of the White Engineering Company,

(Testimony of Gano Dunn.)

Mr. Danziger, Vice-president of the Pan American Company, Mr. Cotter, then another Vice-president of the Pan American Company, Mr. Doheny, probably Doctor Norman Bridge and Mr. Wylie of the Pan American Company, and one or two others. This conference was held in Mr. Doheny's office, 120 Broadway, New York. Witness stated to the persons at the conference that the J. G. White Engineering Corporation had received the invitations from the Department of the Interior, that conformably to witness' discussion with Mr. Cotter, he wanted to discuss with them, now that the formal invitations were out, any further details of the joint or associated relation which Mr. Cotter and witness had personally worked up, and witness had brought other officers of his company along to help in the discussion and also to receive full knowledge from the beginning of what the officers of the Pan American Company would say and also for the purpose of mutually getting acquainted with people with whom it looked as if witness' company was going to have important business dealings.

With regard to the relationship between the two companies if an agreement was reached, witness restated to them what he had stated to Mr. Cotter, that the White Company never took lump-sum bids; that they always entered into an agency relation, or the relation of professional engineer to client, and that witness wanted that clearly understood by them; that Mr. Cotter and witness [563—480] had discussed a relation with the Pan American

(Testimony of Gano Dunn.)

Company in which the White Company, either directly to the Government or through the Pan American Company, was to put in a cost-plus bid, and the Pan American Company was to put in a bid of some kind on the exchange of oil, and that the White Company had agreed to stand or fall with them and they with the White Company. That was the substance of that conversation at that time. [564—481]

Mr. Doheny at that conference said that the costs that the White Company was tentatively reporting on the construction were very much higher than he had expected from estimates made to him prior to that time; and then witness explained to him that the reason for the largely increased costs was that the tanks were not standard commercial tanks, that they were heavier and thicker, that their rivets were closer together, that they had different kinds of foundations and had steel instead of wooden roofs, and there were many other features that made the costs greater. Mr. Doheny said that they would make the arrangement which had been discussed between witness and Mr. Cotter and said also that he had told the Government that he would make or entertain a proposal of this kind and he was going to do it.

Subsequent to this time witness received a telegram from Secretary Finney asking that action be deferred upon the invitation or proposal and thereafter a letter dated or sent out on February 17, 1922, was received by witness on the 18th of

(Testimony of Gano Dunn.)

February and was also received by the Pan American and other addresses. After receiving that letter witness first got a telephonic communication from Mr. Cotter to see whether he had received similarly from the Department of the Interior a communication and found that he had. Then witness said, "This is a sudden and complete reversal of the plans that have been proposed. The specifications that are out are such that lump-sum bids which Secretary Finney's letter to which you refer now said were the only kind of bids that would be considered—cannot be put in without such enormous contingencies, without such an enormously high price being quoted by lump-sum contractors, that it would be unfair to the Government, and that witness felt it necessary, in the interest of his own company and in the interest of the Government and whole job, and of the Navy that wanted to get the base constructed, to go down there and make those representations to them"—which witness did. Witness went down to Washington and saw Secretary Finney and Dr. Bain and thinks he saw Dr. Ambrose and Admiral Robison, but is not sure as to Admiral Robison on that particular visit. Witness had never known Admiral Robison before, [565—482] but met him at his office within a few days of that time. Witness saw Admiral Gregory of the Navy Department at his office. When witness saw Secretary Finney, the latter told witness that the objection came from the Navy, and it was as a result of that that the witness

(Testimony of Gano Dunn.)

went over to see the Navy. He learned that the objection originated with Admiral Gregory, who was then the new chief of the Bureau of Yards and Docks and witness saw him to argue with him about the unfavorable effect the limitation of the bidding to lump-sum bids would have not only upon the prices that would be quoted to the Government, but upon the rapidity of construction which at that time was an important feature. Witness told Admiral Gregory that he thought it would make it a million dollars higher than it otherwise would be, or to that effect, and told him why. He thought his specifications were more complete than they really were. Witness had had the benefit of the study of his specifications by witness in his own organization and brought to the Admiral's attention a number of matters in which the specifications were silent, thereby leaving it uncertain as to where the responsibility for execution was and in the event of uncertainty in bidding to the Government a subcontractor or a contractor always decides that in his own favor and adds it to the price. Admiral Gregory said there were a number of things witness had brought to his attention that he had not recognized before. He still felt, however that he was right, in the main, in objecting to cost-plus bids. The Admiral told witness the objections that he saw from his experience based upon a contractual cost-plus basis of contracting and witness had to agree with him in the objections he stated. Subsequent to that time, Admiral Greg-

(Testimony of Gano Dunn.)

ory sent witness to his own engineering organization to tell them what gaps and omissions witness had found in the specifications and called into his office Commander Sherman, the project manager in the Bureau of Yards and Docks at that time in charge of the work on designs for Pearl Harbor. Commander Sherman took witness out to the engineering offices and introduced him to Mr. McGuire in his office, later to Mr. McKay, later to Captain Barkenhaus, who acted as Acting Chief of the Bureau of Yards and Docks when Barkenhaus was away; also to Mr. Beese and one or two other men connected with the Bureau of Yards and Docks of the Navy, who witness knows and remembers, but whose [566—483] names he could not recall. These in turn introduced witness to some draftsmen at the boards where they were at work on these plans. As a result of all that they began to amplify the plans and specifications a good deal and fill up deficiencies which witness had pointed out.

Witness saw Secretary Finney, Dr. Bain and once or twice Mr. Ambrose in the Interior Department about these specifications before the March 7, 1922, invitations for proposals were sent out. Prior to the sending out of the March 7, 1922, proposals, witness attended discussions with Admiral Gregory, Dr. Bain, Mr. Finney and to a slight extent, Mr. Ambrose regarding alternate proposals to be invited.

Witness said to them, "If you limit your invita-

(Testimony of Gano Dunn.)

tions to only one narrow class of bidding you limit the competition and you also limit the opportunity of the Government getting the suggestions of others in respect to how best to carry out this work." Witness represented particularly to Dr. Bain the universal custom in engineering practice of putting in alternative bids even when they were not invited. He represented to Dr. Bain that the conditions differed with different bidders and that one bidder would find it easier to do a certain thing than another bidder, and told him that he ought to make the basis of the bidding as broad as possible so as to give the Government the advantage of the widest field and the greatest amount of competition.

Regarding the necessity of getting information in order to formulate a safe lump-sum bid from Hawaii, witness said to him when he had in mind calling for bids under the new specifications promptly—that that would defeat the object of what witness had in mind in regard to the proposed invitation, because it was necessary for bidders to go to the Sandwich Islands to study the sites and learn the local conditions before they could make up their minds as to the hazards of the job and as to the kind of labor it was and as to the facilities that would be available for carrying out the work. Dr. Bain saw this point and finally, when the invitations came out, witness observed that he had shoved ahead the date on which the bids should be opened to April 15, giving time for visits to the

(Testimony of Gano Dunn.)

Sandwich Islands on the part of prospective contractors. [567—484]

No suggestions had been made to witness by any of the officials of the Pan American Company before witness talked with Dr. Bain and Admiral Gregory on the matters witness had told about regarding alternate bids and the necessity therefor. They left that to witness because that was the engineering end. The basis upon which crude oil was to be taken and fuel oil to be given, and construction also to be given, was continually referred to throughout our conferences from the end of January on through until the contract was signed by all of those witness had mentioned except Admiral Gregory. They all had the matter in mind. Witness was not very clear as to just what they were driving at, and never concurred in their views as to the ratio of exchange. He felt it would not work, but did not go into details with them. He observed when the invitations came out later that they had called, among other alternatives, for the expression of bids in terms of a ratio of exchange. Prior to the time when bids were opened, witness was not present in Washington where there was any endeavor made to work out a formula for this ratio of exchange, but Mr. Cotter brought the results of such an endeavor to witness and asked whether witness thought it right.

Witness did not meet Mr. McLaughlin, the representative of the Associated Oil Company prior to the time bids were opened. Prior to April 15,

(Testimony of Gano Dunn.)

the day the bids were opened, witness saw Mr. Doheny once to the best of witness' recollection, in another conference like the one already described, the subject of which was making clear to him and his associate officers that there had been a complete change in the basis of proposed relation between the J. G. White Engineering Corporation and his company on which the White Company was expecting to put in a proposition. Previously it had been a relation in which the White Company was to put in a cost-plus bid either to the Government with a parallel contract with him or to him and he was to put in some sort of a similar bid to the Government, but now when the Government had called for lump-sum bids the White Company was not to put in the lump-sum bid used. It was arranged at that conference that while the Pan American Company would put in a lump-sum bid to the Government they would allow the White Company to bid to them on a cost-plus basis and take the chance of our over-running our estimate. On that basis the J. G. White Company would take no chance [568—485] of loss in the event the cost was greater than witness had estimated, but that chance would be taken by the Pan American alone. Witness wanted to make it clear to Mr. Doheny and his officers that the risk was theirs and not that of the White Company. The basis upon which witness then proposed to enter into relationship with the Pan American was that the J. G. White Engineering Corporation was to be reimbursed by the Pan

(Testimony of Gano Dunn.)

American the cost of the construction work plus a fixed fee to the J. G. White Engineering Corporation. The fixed fee as finally agreed upon was in the neighborhood of \$172,000; approximately five per cent of the then estimated cost. The last conference prior to the opening of the bids was held in the Pan American office in New York to the best of witness' recollection between April 1 and April 8, 1922.

The witness drew the form of proposal to be prepared by the Pan American Company. He spent two weeks drafting the proposal and it was only two or three days before the proposal was put in when Mr. Cotter came over to witness' office and told him that he wanted to put in also an alternate proposal and asked witness whether such an alternate proposal would be honored as a proper proposal to put in. At that time witness had informed Mr. Cotter of the basis for figuring a lump sum for the construction work. In that basis that had been agreed upon with Mr. Cotter at that time there was no profit figured for the Pan American Company. What the White Company did as to basis A was to present an estimated cost to the Pan American, and then it was for them to say how much profit they wanted to load on to that cost before using that cost in their bid.

It was at that time that Mr. Cotter saw the witness about putting in an alternate proposal—the percentage of profit to be put into the proposal by the Pan American had been discussed between him

(Testimony of Gano Dunn.)

and the witness. It was in the neighborhood of ten per cent on top of the estimated cost.

The alternate proposal that Mr. Cotter discussed with the witness was that he said he wanted to throw off all that profit between \$300,000 and \$400,000 and then he said, "Also I want to promise to give to the Government the benefit, in addition to throwing off that profit, of any savings [569—486] you make if you contract the Pearl Harbor project for less than your estimated cost." These were the things that stood out in witness' mind and impressed witness and gave him most concern. Mr. Cotter added that at that same time that in consideration of that he wanted the Government, if the proposal was accepted, to grant to the Pan American Company what he called a preferential right to lease certain lands. Witness did not know what a preferential right was and was concerned lest it be a vague and indefinite thing which would invalidate the bid because of having an indefinite value, and when witness learned from Mr. Cotter that it was not a preference in price but merely a preference in order of consideration, or rank, or time, in other words, that it was a privilege that could not be evaluated in dollars, then witness said "All right, I will incorporate those three provisions into the paragraph or two of the proposal I was then working on for two weeks and had already prepared and make it into an alternative proposal." Witness also advised Mr. Cotter that alternative proposals

(Testimony of Gano Dunn.)

had been invited and that such alternative proposals would be regular and subject to consideration.

At the time the final draft of proposal A and proposal B was made, witness had a discussion with Mr. Cotter as to witness' form versus the form drawn by him that was taken up with Mr. Danziger, vice-president of the Pan American Company in that Company's office with the result Mr. Danziger preferred witness' form of proposal and signed it.

The term "proposal sum" and the other terms in that proposal, "proposal sum, basic crude, particular crude, reference price" were witness'. Witness got up the basic formula that is worked out for the exchange of crude and fuel oil in the proposal under contract.

Prior to the negotiation of this matter, witness had had a great deal of experience in Governmental contracts dealing with Government departments at Washington. It not only was customary, but it was necessary in a complicated job that the prospective bidders or persons interested in transaction should visit the departments and go over with the officials of the departments, the terms of the proposal and specifications prior to the opening of bids. The specifications and drawings never are able to contain all the information the [570—487] Government wants to give the bidders and the bidders are welcome to the Government departments to get further information of any kind they can, and it is customary for bidders to go and see the officers and learn all they can about further details of bid-

(Testimony of Gano Dunn.)

ding and what is the real object of the invitation.

Compared with the witness' experience in this White Engineering Corporation in connection with former Government contracts, the witness did not do anything or carry on anything in the least unusual as compared with what witness did on other contracts. Witness was present in Washington at the time bids were opened and his recollection is that there were more persons present than the record shows. Subsequent to the opening of the bids they were left on Mr. Finney's desk when witness left Mr. Finney's office. None of the persons present or anybody protested or objected or raised any question about the consideration of the Pan American proposal B when it was read.

After the bids were opened witness remained a short time in the office in conversation with Secretary Finney and others and then went back to New York. He remembers what was said and among other things, Mr. Cotter, who was present told Secretary Finney that he would prefer to have the Government accept proposal A. He felt that it would be better for his company. Both proposals were lowest bidders and had been found to be such upon the opening. Both proposals were read and were observed to be the lowest proposals and Mr. Cotter said in witness' presence to Secretary Finney, that he preferred the Government would accept proposal A. Witness endorsed this preference because he too preferred proposal A. [571—488]

Just before the bids were opened, from the infor-

(Testimony of Gano Dunn.)

mation that witness had, he expected there would be a considerable number of competitors—that the Foundation Company would bid; that Ford, Bacon & Davis would bid; that the Pittsburgh Des Moines Steel Company would bid; that the Associated Oil Company would bid; that the Standard Oil Company would bid and, of course, the Pan American and the J. G. White Corporation. The witness was very familiar with the Foundation Company—one of the witness' competitors—and also with Ford, Bacon & Davis, likewise a competitor.

On that afternoon witness returned to New York and Mr. Cotter remained in Washington.

On April 17, 1922, witness wrote two short letters from New York, one to Doctor Bain and one to Mr. Ambrose, saying he would be down next day, and in the letter to Ambrose referred to telephone communication between Mr. Ambrose and Mr. Cotter. The witness either called up Cotter, or *vice versa*, and learned of Ambrose's telephone communication to Cotter. The substance of that telephone communication was, "Come down right away," and they went. Witness thinks Mr. Cotter was in Washington. He telephoned to witness and said the word from Mr. Ambrose was to come down right away. Witness got there on the 18th. From Saturday, April 15, 1922, when witness left Secretary Finney's office, until the 18th, witness did not see Doctor Bain or Mr. Ambrose. Neither the witness, nor anybody in his presence, asked Mr. Ambrose or Doctor Bain, or any Government official, anything about what

(Testimony of Gano Dunn.)

their report was going to be or make any suggestions to them about their report on the bids.

On arriving at Washington on the 18th, witness saw Bain and Ambrose—he rather thinks Ambrose first—and also Secretary Finney. Mr. Cotter and the witness were told by all three of them, Bain, Ambrose and Finney, at different times, that they were the lowest bidders. Witness thinks that Mr. Finney said to Mr. Cotter that the Pan American Company was entitled to the award, and there were a number of things on which he wanted information in regard to details of the Pan American proposal and other things like that. At that time, or the following day, Mr. Finney said in substance that telegrams had been sent to Secretary Fall with certain recommendations and that replies [572—489] had been received. He said that the recommendations were that the Pan American Company bid proposal B should be accepted and that the replies approved that recommendation.

Witness saw Admiral Robison on that visit to Washington on April 18th, and had a talk with him at the Navy Department. The Admiral said, "There is a feature as to Article 12 which may cause considerable confusion unless it is made clear at the beginning." That feature referred to the part of Article 12 which said that if the contractor succeeded in effecting the construction and erection of the storage facilities therein called for at a lesser cost than three million and some-odd thousand barrels of crude oil at the reference price he

(Testimony of Gano Dunn.)

would give the Government the benefit of the saving by crediting it, in barrels of basic crude oil, against the proposal sum. Admiral Robison said that it would be better to save the large expense which he mentioned as being made, if witness recollects correctly, in the neighborhood of \$100,000 involved in the custom of accounting for certain types of Navy contracts if the accounting could be left in the hands of the J. G. White Engineering Corporation as a commercial accounting—an ordinary commercial job. To do that, however, required a special mention in the contract, otherwise the accounting would naturally be made as a certain type of Government contract. So witness suggested the introduction of the phrase in connection with the sentence, "He will give the Government the benefit of this saving"—Admiral Robison introduced the phrase—"as determined by agreement between the contractor and the Secretary of the Interior," meaning that through that phrase auditors could be put upon the books of the J. G. White Engineering Corporation and the Government inspectors could accept the books of the J. G. White Engineering Corporation as *prima facie* evidence of the account, the same as any private concern would do.

Prior to the time the contract was signed and while it was in process of drafting, witness was present at several conferences between Mr. Cotter and others in Secretary Finney's office with regard to the making of Secretary Denby a party representing the Government in that contract. The first

(Testimony of Gano Dunn.)

conference was on April 15th, right after the opening of the bids. There was a [573—490] considerable conference around April 18th, at which Mr. Finney, Mr. Cotter, the witness and, part of the time, Doctor Bain, were present. Mr. Cotter, in addition to saying what the witness has already testified to about preferring that the Government accept proposal A, said that he felt that when the contract was drafted it ought to have, in addition to the signature of the Secretary of the Interior, the signature of the Secretary of the Navy. Secretary Finney tried to dissuade him from this saying, "Joe, I don't think that is necessary." Mr. Cotter hesitated and said, "Well, I think it ought to be." At the last of the conference on that subject Mr. Cotter was very firm and Secretary Finney somewhat impatient. Mr. Cotter finally said, "Well, Judge, I feel so strongly about this that unless the contract is signed by the Secretary of the Navy as well as by the Secretary of the Interior, I do not feel that I can take the responsibility of recommending it to my company." Whereupon witness left the office and was uncertain what would happen.

Witness overheard, but was not very much interested in, several conversations on the part of Mr. Cotter when the Government and its representatives all seemed inclined to accept proposal B instead of proposal A, in which he said he felt that he was entitled to something definite, or some definite assurance that there would be something he would

(Testimony of Gano Dunn.)

get under the preferential right clause. Very often Mr. Cotter said he preferred they would accept proposal A; that he had thrown off the profit on proposal B and offered to give the Government the savings; that there was nothing in the contract for the Pan American Company except the occupation of a couple of tankers, and he felt that his company officials would criticise him for not having made a sufficiently advantageous contract. He told that to Secretary Finney, to Mr. Ambrose and to the witness. Witness does not recall any such conversation on Mr. Cotter's part with Admiral Robison or Dr. Bain on that feature, but remembers that in general Mr. Cotter said to Admiral Robison that he preferred the Government to accept proposal A. Witness remembers that Secretary Finney replied to Mr. Cotter orally on that subject, saying that proposal B had been recommended by the officials of the Bureau of Mines as the most advantageous proposal to the Government, and, therefore, he wanted to accept that proposal, [574—491] and that he, Secretary Finney, concurred in that view.

While the contract was in process of drafting, the witness assisted in the drafting, furnishing data. In Article 12 of the contract it says that if the contractor succeeds in effecting the construction and erection of the storage facilities herein called for, etc., etc., at a lessor sum than blank number of barrels of basic crude oil, etc.,—that paragraph was based on the proposal—the proposal said

(Testimony of Gano Dunn.)

that if the contractor succeeds in effecting, etc., etc., at a lessor cost than its estimate, it would give the Government the benefit of the saving. Question then was, "What was that estimate?" Witness brought J. G. White Corporation's estimate down from New York and showed it to those drafting the contract and gave them the figures that now appear in the contract, and that incorporation was made into the contract. It is in oil in the contract and the witness gave them the figure in dollars, and it was changed into oil there. The figures given them in dollars was \$3,516,000 odd dollars.

Under date of April 28, 1922, after the contract was signed, witness received a communication from Doctor Bain. It is the one that transmits the Gregory procedure. Defendants' Exhibit "C4" consists of a letter from Bain to witness transmitting memorandum prepared in the Bureau of Yards and Docks of the Navy, which is Exhibit "D4" below.

The witness conferred during the three, or four, or five days after he received the plan of procedure on April 29th, with officials of the Government with regard to revising that plan of procedure, and there was drafted a proposed form of agreement with regard to the procedure, being on a Department of the Interior letterhead, dated May 3, 1922. Its preparation was a joint matter, involving three or four of the parties interested, the witness having a good deal to do with it. Mr. McClellan, the counsel of the Hawaiian Dredging Company, had a part

(Testimony of Gano Dunn.)

in it; Mr. Williams, vice-president in charge of construction in the White Company, and Mr. Finney and Mr. Ambrose. Witness knows that it was never executed by all of the parties for whose execution blanks are left at the bottom thereof. It was executed by Mr. Danziger for the Pan American Company. The witness never heard of its being [575—492] executed by anyone else.

Memorandum of procedure, dated May 3d, 1922, was then offered and admitted in evidence as Defendants' Exhibit "D4" and is as follows:

DEFENDANTS' EXHIBIT "D4."

"May 3rd, 1922.

Memorandum of Procedure for approval of the Secretary of the Navy, the Acting Secretary of the Interior and the Pan American Petroleum & Transport Company, with respect to Sections 215, 216 and 230 of the contract dated April 25, 1922, between the Pan American Petroleum and Transport Company and the Government.

1. Contract consists of two principal parts. The first is the exchange of crude oil for fuel oil, the fuel oil to be delivered in tankers at Pearl Harbor. The second part is the construction of oil storage and the receiving of oil in tanks at Pearl Harbor.

2. The Department of the Interior shall retain direct control of the oil business involved in this

contract, in other words, of the first part of the contract mentioned above.

3. Admiral L. E. Gregory, the new Chief of the Bureau of Yards and Docks, is individually made the personal representative of the Secretary of the Interior in handling the second part of the contract as noted above. This involves first, all technical matters in connection with the plans and specifications for storage, and which in its general phases can be most expeditiously handled in Washington. Second, the supervision of construction work in the field at Pearl Harbor, and third, the receiving of the oil at Pearl Harbor from the tankers and placing same in tank storage as it becomes available under this contract until such time as the completed plant shall be turned over to the Government.

4. The Secretary of the Interior expressly reserves at all times the right to recall the foregoing personal representation, and, in consultation with the contractor, to designate a successor from the Navy Department as his personal representative. This will in no way involve the functions at present exercised by the Chief of the Bureau of Engineering in dealing with the Secretary of the Interior in regard to all matters in general, since the only function of the personal representative of the Secretary of the Interior, would be the technical work of constructing the tanks, the receiving and storing of the oil during construction and reporting to the Secretary of the Interior the amounts received.

5. Admiral Gregory, representing the Secretary of the Interior, will then designate the Commandant at Pearl Harbor as representing the Bureau in the field. The District Public Works Officer will be designated as the Officer-in-Charge of the work under paragraph 215 of contract specifications. Admiral Gregory will designate an officer to have direct charge of the work on the ground and to devote his time exclusively to that work; he to receive orders from the Secretary of the Navy to report to the Commandant of the Fourteenth Naval District [576—493] for duty under the District Public Works Officer solely in connection with this contract.

6. The contractor and his designated agents having the right to appeal direct to the Secretary of the Interior and to his personal representative, notice of any appeals on the part of the contractor from the decision of the Officer-in-Charge of the work and the reasons therefor shall be forwarded promptly being routed through the Commandant and the Chief of the Bureau of Yards and Docks on their way to the Secretary of the Interior.

7. On account of the importance of this contract and of the fact that it contains a bonus and penalty clause as to date of completion of the work, and of the importance of the Government causing no delay, it is stipulated that the inspection force to be provided by the Navy Department shall report for exclusive service on this contract, unless

(Testimony of Gano Dunn.)

otherwise approved by the Secretary of the Interior or his personal representative.

8. The authority of the personal representative of the Secretary of the Interior shall include the authority of the Secretary of the Interior to appoint boards of government representatives in connection with changes in construction work as provided by paragraph No. 230 of the specifications provided that any changes in contract be submitted to the Secretary of the Interior for approval.

Approved:

PAN AMERICAN PETROLEUM &
TRANSPORT COMPANY.

(Signed) J. M. DANZIGER,
Vice-President.

Approved:

_____,
Acting Secretary of the Interior.

Approved:

_____,
Acting Secretary of the Navy."

Thereafter the witness received a copy of a letter signed by Mr. Finney and approved by Edwin Denby, Secretary of the Navy, dated May 5, 1922, which is already in evidence, Exhibit 129, outlining procedure. The witness did not take up with Mr. Cotter personally this question of procedure because he was traveling on a train, but telegraphed him the substance of the discussions in order to get his approval, because in his absence the witness was acting to represent the Pan American Com-

(Testimony of Gano Dunn.)

pany. This question of what the procedure should be was handled, so far as the contractor was concerned, by witness with the Government. No other official of the Pan American Company, except Mr. Danziger when he signed his name to the May 3d form, handled it. [577—494]

Before the procedure was determined upon, witness' company entered upon the work of Pearl Harbor under the first contract, but entered it with very great vigor after that date. The first project has been completed. There were extras, increases and decreases by reason of changes in the work, all in accordance with the provisions in the contract for such, but witness' company and the Pan American Company saved the Government \$466,000 under the estimated cost. That was arrived at by taking the estimated cost and whenever the Government ordered anything that was not part of the original project, and, with their concurrence, all as provided in Section 230 of the specifications, the White Company made an estimate of what that additional item would cost. Then, with the Government's approval and permission, that extra was added to the estimate, and when the extra was carried out the cost thereof was added to the cost. The difference between the initial estimate, augmented by such additions and the final cost augmented by such additional costs, was \$466,000. In arriving at that figure the witness did not take into consideration at all the \$150,000 represented

(Testimony of Gano Dunn.)

by the difference between \$1.00 and 90¢ for the fuel oil. It was solely construction.

Admiral Gregory fixes the date of that contract as of December 15, 1923. It was accepted later, but as of that date.

There is also a disputed figure of \$150,000, which the witness believes that Admiral Gregory's testimony erroneously considers to have a bearing upon those savings. No matter how that is decided, it would go on one side of the ledger and then on the other side. If it is decided adversely to the job, the subcontractors have to stand it. They are under contract to do that, so it does not affect the savings. The savings are not affected by favorable or adverse decisions on those items under dispute. The main item of that is with respect to the question of who was responsible, the designer or the subcontractor, in connection with some concrete piles that had to be changed—about half of it.

Witness first learned from Admiral Robison in the latter part of November, 1922, of the contemplated extension of the Pearl Harbor fuel plant. [578—495] In substance he said, "Dunn, there is going to be a large extension of the Pearl Harbor storage and I will tell you more about it in detail later." He said, "It is very confidential."

Mr. Cotter first talked with witness about the extended project in the early part of December and told him there was to be an extension of the Pearl Harbor storage and that he would tell him the details at a later time.

Prior to the time the April 25, 1922, contract was

(Testimony of Gano Dunn.)

signed, the witness once—in the latter part of March—saw Secretary Fall. Doctor Bain took the witness up and introduced him. Mr. Safford was also present and one or two others came in and went out while the witness was there. The conference was solely a social one and a pleasant visit. Witness had a letter of recommendation from Judge W. Hawkins of El Paso, Texas—whose wife is his wife's sister—to Secretary Fall. Judge Hawkins is an attorney at El Paso and thirty years ago he was Secretary Fall's law partner. A letter of recommendation, at the witness' request, was sent by Mr. Hawkins directly to Secretary Fall, and then Mr. Hawkins told the witness he had sent it, and the witness asked Doctor Bain to take him up and introduce him to the Secretary after he received the latter, which he did, and the conversation was largely social. They did not deal with the business part of this project in any way except as mentioning that the witness was a prospective bidder for the work, etc., but no determinations were made or anything of that kind. When the witness told Secretary Fall he was a prospective bidder for the work, he said he was very glad to know it because it would insure that the work would be well done. He said it was in the hands of Doctor Bain and in substance that he wanted it done as cheaply as it could be done.

After the December 11, 1922, contract between the Pan American and the Government was made, a new arrangement, similar to the old, was made be-

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(Testimony of Gano Dunn.)

tween the J. G. White Company and the Pan American Company. That work the witness estimates to be 95% finished. That means the last part of the entire project. If the entire project is considered taken as a whole, it would make it about 98% finished. The witness produced certain progress charts. [579—496]

With regard to subcontracts for the work under the first project, some of these contracts were competitively let and others were not. About 98% were let on a lump-sum basis. Prior to the time contract was received by the Pan American Company, on April 25, 1922, witness had received from Doctor Bain a list of names of suggested concerns for subcontracting, which has already been put in evidence.

Under the contract of December 11, 1922, all subcontracts were competitively let. In the second contract every bid was submitted to the Bureau of Yards and Docks. No contract was awarded except by their instructions and no bidder was invited except with their approval, and the decisions on the letting of the contracts and all procedure in connection with it, were made down in their office in Washington, when we, at the time of opening the bids, brought all of the bids down there in connection with each particular item that was let. No estimated cost was mentioned in the contract of December 11, 1922, for construction work because the project had not yet been defined. It was not defined until it was nearly finished, but when we

(Testimony of Gano Dunn.)

got along toward the middle of the project, it was roughly figured about 4,000,000. With the project in its present nearly completed condition, the estimated cost of the construction part of it is in the neighborhood of \$4,000,000.

It is the custom among engineering concerns such as the J. G. White Engineering Corporation, while doing construction work, to take progress photographs from time to time. It is one of the essential features of service to clients. No progress photographs were taken of the Pearl Harbor work as they were not allowed on account of the secrecy of the work. It was first forbidden by the officers in the Bureau at Washington, and then by the officers in charge of the station at Pearl Harbor.

The witness saw a plat of the Pearl Harbor Station placed upon the blackboard while Admiral Gregory was on the witness-stand, and had seen it, or its prototype, in the Navy Department. Its condition when the witness saw it was with a large part of its features deleted in the printing by having pasters put over it so that the plan was hardly useful so much had been taken out. The witness has received photographs in connection with [580—497] these contracts from the Navy Department which came with large parts of the printing cut out, or printed out in large, great spots, where the Government did not want to show certain features of the typography or the other parts of this project. Photographs came with holes cut right out of them and in a mutilated condition, and

(Testimony of Gano Dunn.)

it has been so as regards the Pearl Harbor photography all through from the very beginning. Photographs received under Contract 4800 were almost invariably received with pieces cut out of the photographs. [581—498]

Cross-examination.

On cross-examination by Mr. Roberts, the witness testified as follows:

He never had any conference with Admiral Robison prior to the submission of the bids relative to an alternative bid by the Pan American Company. The Admiral never conveyed to him any desire or request for such a bid, and the witness never told him that any was proposed by the Pan American Company. Witness did not tell Doctor Bain an alternative proposal was going to be submitted by the Pan American Company before it was submitted. Doctor Bain absolutely did not suggest that he or Secretary Fall desired an alternative which would mean that the work would be done at cost in consideration of certain preferential rights or other things to be granted by the Government. The witness did not discuss any alternatives with Doctor Bain, but did discuss the principle of alternative bidding in general to make the latitude wide. Witness did not know what they might drag, but did not have lessee in mind at that time. Witness did not have any discussion with Mr. Ambrose about submission of an alternative bid by the Pan American Company bid with preferential rights in it, or at cost. Neither Mr. Ambrose, nor

(Testimony of Gano Dunn.)

Admiral Gregory, nor Secretary Fall, told the witness before the bidding of any desire on the part of the Departments, either of the Interior or the Navy, for any such bid.

There was then produced a letter dated May 12, 1922, written by the witness to Admiral Gregory, and it was marked U. S. Exhibit 256 for identification.

The witness had a discussion with Mr. Cotter about the submission of an alternative bid at cost in consideration of the Government making certain grants to the Pan American Company. Mr. Cotter did not say that that had been requested of him or his company by any officer of the Government.

Referring to the paragraph in the letter of May 12 to Admiral Gregory, he says, "One of the reasons why proposed B was considered most advantageous to the Government was that in response to a wish expressed by Secretary Fall a distinctive feature was introduced in addition to the quotation of a flat lump sum." When the witness saw Secretary Fall he expressed the wish that the work be carried out as economically as possible. He said that to a number of [582—499] others in the Department who told witness—the wish to which the witness referred to in that letter. The witness is not certain whether it came to him from Secretary Fall through Doctor Bain through Mr. Cotter, or whether it came from Secretary Fall from Mr. Cotter to witness, but it was the general wish that the work be carried out as economically and cheaply

(Testimony of Gano Dunn.)

as possible; and when Mr. Cotter instructed the witness to draw that paragraph, it was to conform as much as possible to that wish, to avoid the pyramiding of contractor's profits, which had been talked about a good deal in the Department. Witness had not been informed that at the outset of the discussion between Pan American Company and Secretary Fall of this proposed project—October or November, 1921,—the Pan American Company had said to Secretary Fall or to some officer in the Government that they would bid at cost and without profit.

The letter of May 12, 1922, tells the whole story as to requests that the contractors be credited with certain savings by reason of having gotten firm subcontracts at less figures than the original estimates. They granted both requests in the letter.

Mr. Cotter said there was very little in it for their company; that with the profit thrown off of the construction and with any savings that might be made turned over to the Government in addition, the only thing left for them was the keeping busy of certain tankers which might otherwise be idle, and that was the real advantage to them.

The witness wrote the letter of April 3d to Mr. Cotter. "Bacon & Eggs" referred to in that letter means Ford, Bacon & Davis.

The letter of April 3, 1922, by the witness to Mr. Jos. J. Cotter, was then offered and accepted in evidence and marked U. S. Exhibit 257, and is as follows: [583—500]

PLAINTIFF'S EXHIBIT No. 257.

"THE J. G. WHITE ENGINEERING CORPORATION.

April 3, 1922.

CONFIDENTIAL.

Joseph J. Cotter, Esquire,
Mexican Petroleum Company,
Woodward Bldg., Washington, D. S.

Dear Mr. Cotter:

Mr. Dillingham has received a telegram from his San Francisco office to the effect that Bacon & Eggs are considering reentering the situation as bidders.

This Mr. Dillingham takes to mean a possible connection with the Associated. I remember that Bacon & Eggs formerly advised the Department that they would bid only on a cost plus basis. I doubt if a cost plus bid, separated from an oil bid, would have much consideration.

The Pittsburgh & Des Moines people had a long talk with Mr. D. last week, who pointed out certain features in the general proposal which considerably discouraged them. There is no reason why both Pittsburgh & Des Moines and Bacon & Eggs should not each put in a separate bid direct to the Government, payable in oil, in conjunction with a side contract by which the Associated would accept their oil.

We have just pressed the Pittsburgh & Des Moines people for their bid on the tanks, which has been several times promised and was overdue on April 1st. They now tell us they were unable to

bid on the tanks, confessing that they are considering competing with us by a bid on the whole contract. Their New York people are endeavoring to dissuade their Washington people from doing the latter and the question will be decided by their President Jackson, who arrived in Pittsburgh yesterday from Honolulu. They mumble something about wanting to work with us, and I give you the above for what it is worth, as it flies by.

I just missed you as you were taking the train today. Shall come down Wednesday night as planned.

Very truly yours,

RMS.
[584—501]

GANO DUNN,
President."

A letter of March 1, 1922, to H. Foster Bain, signed by the witness, was then offered and received in evidence, marked Exhibit 258, and is as follows:

PLAINTIFF'S EXHIBIT No. 258.

"Dear Mr. Bain:

I have had a further telephone from Mr. Cotter and find that Mr. Dillingham is in New York ill at the Harvard Club, where I have had a long telephone conversation with him, and I have arranged to see him tomorrow morning again.

He is to long distance telephone his representative at San Francisco tonight to give our Vice President now on the Pacific Coast complete information and prices, and I will keep you further ad-

vised after conference with Mr. Dillingham tomorrow morning.

Very truly yours,

GANO DUNN,

President."

Thereupon the witness Gano Dunn was excused.
[585—502]

Thereupon there was read in evidence the substance of Defendants' Exhibit "B4" which had been identified and offered when the witness Dunn was testifying. Said exhibit consisted of a series of progress charts showing the progress of work done on the second Pearl Harbor project as of dates indicated on the charts, and it was agreed that the same show, in substance, that the fuel oil tank foundations were entirely completed on March 16, 1924; that the fuel oil embankment, concrete, was entirely completed on August 2, 1924; that the grading of the Pearl Harbor tank area was completed on May 1, 1924, and the tank embankments completed August 2, 1924; the term "completed" as used herein means entirely completed so far as a part of the construction work mentioned is concerned; that this schedule of tank erection provided for one 80,000 barrel tank, one 50,000 barrel tank and seventeen 150,000 barrel tanks, and that all of these tanks were completed on August 18, 1924; that the lubricating plant was completed on September 2, 1924; the Ford Island dredging was completed on February 29, 1924; the Barracks Building (referred to in testimony of witness Admiral Gregory) was completed on March 31, 1924; Ford Island tank

foundations, pump-house, trenches and grading were ninety per cent completed as of August 31, 1924; all piping was completed August 31, 1924; the electrical work was ninety per cent completed, fencing around the plant sixty per cent completed, and the Ford Island wharf eighty per cent completed as of August 31, 1924; gasoline tank erection is under way.

Thereupon there was re-exhibited to the Court Plaintiff's Exhibit No. 131 as introduced during the testimony of Admiral Gregory and introduced in evidence as Defendants' Exhibit "F4," identified by witness Dunn, being the same chart as Exhibit 131 with the Navy's deletions therefrom indicated in white; said Exhibit "F4" is appended to this statement next to Plaintiff's Exhibit No. 131 also so appended.

It was stipulated by counsel for the parties that the testimony of Dr. H. Foster Bain, Director of the Bureau of Mines, given before the Sub-Committee of the Appropriation Committee of the House of Representatives on December 4, 1921, at which time that Committee had under consideration the appropriation [586—503] bill for the Interior Department for the fiscal year beginning July 1, 1922, and ending June 30, 1923, was officially reported and published in a House document, that the witness Bain when testifying in this case identified the same and that so much of the official transcript of the said testimony under the heading of "Depletion of oil supply under Government lands through operation of wells on adjoining private

lands" consists of questions propounded by members of the Committee and answers made thereto by Dr. Bain, and may be offered and received in evidence and the same was accordingly read to the Court as follows:

"Mr. FRENCH.—Before you get to that, with respect to the oil leases to which you have referred, the Government has an important interest in that through its royalties, has it not?

Dr. BAIN.—Absolutely.

Mr. FRENCH.—To what extent is the work behind at this time? You were, of course, away behind because of litigation.

Dr. BAIN.—Yes, sir. It is not now so terribly behind. I think we will get those computations ready without any extra force in the course of a year or two. I will tell you what we have done. When the permit is given it is required that the man shall start work within six months, and drill the first year a certain number of feet before he can get a lease. We have not tried to watch this work. We do not know whether they are doing it properly or not. We consider it more important just now to compute the back royalties due and to supervise the drilling in known pools. We cannot take care of any more pools without more men and money. The work should be extended promptly as the wells come in to check the share of the oil coming to the Government.

Mr. FRENCH.—And avoid waste, either to the Government or to the lessees through delaying inspection of that work.

Dr. BAIN.—That is the very danger of it. I think before it gets to that we would find out about it and send somebody to look after it. There is always the danger of the first man that gets into the field using careless methods that injure the field.

Mr. CARTER.—Right in that connection I make this statement. Perhaps the director knows more about it than I do. In about 1913 certain public lands were segregated for insuring a supply of oil to the Navy. It developed that the Standard Oil had drilled certain tracts adjoining the Government lands, and these wells withdrew oil from the Government reserves. Along in the last year, not before then, that Government land, or a part of it, the withdrawn lands, had been leased. Prior to that time the Navy Department would not permit the leasing of it. Prior to that time and up until after development started on the withdrawn lands they were having a most prodigious production in all those wells of the Standard Oil Co., and now since those other developments have been permitted on Government lands [587—504] it has been found that the largest wells they find there are on one particular tract adjacent to this, and produce only about 300 barrels, whereas the other wells produced as high as 6000 barrels. There can be but one conclusion.

Mr. CRAMTON.—It is the same Standard Oil?

Mr. CARTER.—These wells of the Standard Oil produced something like 6000 barrels?

Mr. CRAMTON.—Yes, sir.

Mr. CARTER.—The one on the Government land adjoining produces only 300. There can be but one conclusion, that the Government sat there and permitted the Standard Oil to draw this oil off when it should have offset the Standard Oil wells.

Mr. FRENCH.—That is the point I had in mind, that the work for the Government must be kept up to date; and it seems to me there is a responsibility upon this Committee as well as upon the Bureau of Mines to see to it that you are able to function properly under the law.

Dr. BAIN.—The point is very well taken.

Mr. CRAMTON.—One other matter, since we have mentioned this naval reserve matter. I would be glad for just a moment to go into that. The naval reserve in California covers an important part of that rich field in California.

Mr. CARTER.—That was the field that I referred to.

Mr. CRAMTON.—There are some wells in operation there from which the Government is now drawing its royalties, and those royalties are payable in kind, I think, in all cases.

Dr. BAIN.—At the option of the Government.

Mr. CRAMTON.—Optional with the Government to be in kind or cash.

Dr. BAIN.—Or in cash.

Mr. CRAMTON.—Or in cash. Recently action has been taken by the Secretary of the Interior with reference to that field, has it not?

Dr. BAIN.—Yes, sir.

Mr. CRAMTON.—What is the nature of that action?

Dr. BAIN.—There are two. In the first place, the thing Mr. Carter has brought out. The Secretary of the Navy has decided that he wants all of one of these reserves which is badly cut up by private lands drilled in order to get this oil out and above ground, to get it to a safe place rather than to be left there to be drained off through adjacent leases. So a much more extensive drilling is to be planned than at the time we went over our estimates. The other thing is this, that they ask us to exchange that crude oil in the field for fuel oil at the Coast, and we have made some exchanges. [588—505]

Mr. CRAMTON.—Who asked that?

Dr. BAIN.—The Navy. So we made that exchange covering the months of November and December.

Mr. CRAMTON.—Yes. Who decides how that royalty shall be paid?

Dr. BAIN.—The Navy, in this case, because we are acting for them.

Mr. CRAMTON.—Can you make any estimate? You have already said you will put in that other data as to how much oil is likely to be available for the Navy under this royalty plan for the fiscal year 1923 if the policy of exchange of their crude oil in kind for fuel oil is carried out.

Dr. BAIN.—It will be somewhere between 1,000,000 barrels and one and one-quarter million barrels.

Mr. CRAMTON.—What is the market value of that oil?

Dr. BAIN.—I cannot tell you what it will be by that time.

Mr. CRAMTON.—At the present time?

Dr. BAIN.—Approximately \$1.50 per barrel. It depends also on where it is delivered.

Mr. CRAMTON.—What are the possibilities of the Navy storing any large amount of fuel oil or of crude oil for any long period of time?

Dr. BAIN.—That is the plan they have in view.

Mr. CRAMTON.—What is the particular capacity now in storage?

Dr. BAIN.—They have no adequate capacity at all, but the plan under contemplation is to exchange some of that oil for storage so as to store it above ground instead of below ground.

Mr. CRAMTON.—What can you say about the feasibility of storage of oil for any extended period of time?

Dr. BAIN.—For fuel oil it is quite feasible.

Mr. CRAMTON.—How expensive a proposition is it?

Dr. BAIN.—It depends on the character of the storage. In a general way it is perhaps two cents per barrel per month.

Mr. CARTER.—Is that steel storage?

Dr. BAIN.—Yes.

Mr. CARTER.—What particular advantage would there be for the Navy or for the Government, which the Navy represents, to take their royalty in kind, provide the cost of storage and expense of storage, and hold it for an extended period, rather than to sell, taking royalties in cash, and

having the cash for use at a time when the Government greatly needs it; and when they need the oil, buy their oil? [589—506]

Dr. BAIN.—It is the insurance of having a supply.

Mr. CARTER.—Of having a supply?

Dr. BAIN.—A reasonable supply for any naval emergency.

Mr. CRAMTON.—What is termed a reasonable supply? What is contemplated by that? For how long a period would such an emergency last?

Dr. BAIN.—That is a matter for naval officers to determine. On those things we simply show them how to do what they want to do. What constitutes a reasonable supply is, of course, the ratio to the amount of use expected.

Mr. CRAMTON.—I am asking a little more with reference to the advisability of storage.

Dr. BAIN.—That is entirely feasible.

Mr. CRAMTON.—The Navy has a big investment there in these oil reserves and will receive millions of dollars out of their royalties. Why, then, should not the receipts from those wells bear the expenses of the Government with reference to them, and as a part of that expense, the service rendered by your Bureau?

Dr. BAIN.—If you consider this a proper expenditure, why not take it from the fuel appropriation of the Navy?

Mr. CRAMTON.—The Navy Committee will take up the matter of the fuel appropriation. A portion of the oil may be sold, other portions put in stor-

age, and you are only acting in accordance with their requests to you?

Dr. BAIN.—That is all.

Mr. CRAMTON.—The Secretary of the Interior does not contemplate for you to do anything except when the Navy asks it.

Dr. BAIN.—The Navy gives us a general policy and we follow it out."

Thereupon there was offered and received in evidence in connection with the correspondence beginning with Plaintiff's Exhibit No. 13 and ending with Plaintiff's Exhibit No. 14, a memorandum dated Bureau of Supplies and Accounts, Washington, July 29, 1921, to the Secretary of the Navy from Rear Admiral David Potter, Chief of the Bureau of Supplies and Accounts, which is Defendants' Exhibit "G4" and reads as follows: [590—507]

DEFENDANTS' EXHIBIT "G4."

"MEMORANDUM FOR THE SECRETARY OF THE NAVY.

Subject: Exchange of royalty oil obtained from wells on Naval Reserves.

With reference to the letter of the Secretary of the Interior, dated 23 July, 1921, I strongly recommend that the plan suggested by the Secretary be accepted. It will be of great benefit to the Navy to have the royalty crude oil from wells on the Naval Reserves (both those already in operation and those to be drilled by the Pan American Petroleum Company and the United Midway Oil Company) ex-

changed for fuel oil at tidewater to be stored if practicable without expense to the Government, and if possible for tanks in which such fuel oil can be stored. As the Navy has no appropriation to pay for the cost of construction of tank storage, the acquisition of tanks by exchange for crude oil from Naval Reserve wells will be most acceptable.

While these tanks could be readily utilized at any point at tidewater, their usefulness to the Navy would be increased if they could be located at any one of the following points:

San Diego	San Francisco Bay
San Pedro	Puget Sound

Honolulu or Pearl Harbor, Hawaii.

In view of the greatly reduced amount available under the appropriation "Fuel and Transportation" for the present fiscal year, it would be of special benefit to the Navy to obtain royalty fuel oil at this time as such oil would not involve a charge against this appropriation.

I recommend that the Secretary of the Interior be requested to undertake to consummate the arrangement, as suggested in his letter.

DAVID POTTER."

Thereupon there was read in evidence (and marked Defendants' Exhibit "H4") the following stipulation dated October 10, 1924 and signed by the parties to this cause of action by their respective solicitors:

DEFENDANTS' EXHIBIT "H4."

"It is hereby stipulated by and between the plaintiff and the defendants, by their respective solicitors of record, that the following statement may be read in evidence during the trial of the above-entitled cause and be received with the same force and effect as if the facts therein contained were testified to at the said trial under oath by Theodore Roosevelt as a witness called by either plaintiff or defendants herein:

Testimony of Theodore Roosevelt.

My name is Theodore Roosevelt. I am a citizen of the United States and of the State of New York and a resident of Oyster Bay at the latter place; I am 37 years of age; I was on or about March 5, 1921, appointed Assistant Secretary of the Navy of the United States and served continuously from that date in that office until September, 1924, when, following my nomination for the office of Governor of New York by the Republican Convention in that State, I tendered my resignation to the President of the United States and the same was accepted by him. [591—508]

My first information regarding the consideration of the subject which eventually resulted in the Executive Order signed by President Harding dated May 31, 1921, was, as I recall it, in the Spring of 1921, one day after a Cabinet meeting. The Secretary of the Navy, Mr. Edwin Denby, returning to

(Testimony of Theodore Roosevelt.)

the Navy Department, told me that this subject had come up for discussion at a Cabinet meeting. I cannot fix the date accurately but I should say that that was some time in April, 1921. Prior to the issuance of the Executive Order the matter was discussed in general between Secretary Denby and myself. Up to that time I had not given any very definite attention to the subject of the Naval Reserves, though I had discussed the general subject of the Naval Reserves with Admiral Griffin and certain other officers in the Department who were charged with looking out for that matter. Some time in the Spring of 1921, the exact date I do not recall, Secretary Denby sent me a copy of a proposed Executive Order transferring naval oil reserves to the Department of the Interior. He sent at the same time a copy to the Bureau of Engineering. After getting my copy of the order I asked Admiral Griffin, who was then chief of that Bureau, and who had the handling of the oil reserves in his charge, to talk it over with me. I knew very little about the matter, but Griffin felt very strongly that this transfer would be a mistake. After thinking the matter over I decided that he was probably right. I went to Secretary Denby and urged that the land be not transferred to the Interior Department. He informed me that my protest in the matter was made too late, because the transfer had been agreed to by the President, Secretary Fall and Secretary Denby. I then went back and discussed the matter further with Griffin and I believe with Commanders Stuart

(Testimony of Theodore Roosevelt.)

and Shafroth. It occurred to me that if we could get an amendment to the original draft of the order making it necessary for the Interior Department to gain consent of the Navy Department before any leasing or drilling was undertaken, we could safeguard the interests of the Navy. I discussed this subject with Admiral Griffin, and I believe with Stuart and Shafroth, and we came to the general idea, or arrived at the general thought, that the original Executive Order as contemplated did not give the Navy any actual physical control over the oil in the reserves if signed. It was largely a theoretical point, because, of course, the President would be in control of both departments anyhow, and therefore could impose his best judgment as to the disposition on either or both departments as to the handling of the oil. However, after we talked it over, there was a suggested modification of the first order; the modification is contained in the phrase in the Executive Order beginning 'but no general policy as to drilling or reserving lands located in a naval reserve shall be changed or adopted except upon consultation and in co-operation with the Secretary or Acting Secretary of the Navy.' That clause, or substantially that clause, I took up with Secretary Denby myself, explaining as my reason for taking it up that though we were working in perfect harmony with the Interior Department at the moment, things might change; civilian administration in both departments is not of a permanent nature, and there might arise at some time in the

(Testimony of Theodore Roosevelt.)

future a condition in which the then Secretary of the Navy and the then Secretary of the Interior might not be on such a good working arrangement, and that it would be safer from the Navy's standpoint to have in the order this particular clause. Secretary Denby agreed, and said that he thought it was a better proposition [592—509] from the Navy's standpoint, and directed me to take the order to Secretary Fall with this suggested amendment in it. Secretary Denby told me that if I could get Secretary Fall to agree to this amendment it would be all right with him. I then took the order up to Secretary Fall, and Secretary Fall immediately agreed to this new paragraph. There may have been some slight modifications made in this paragraph, some 'ifs' and 'ands' in this discussion, I do not remember as to that. After Secretary Fall had agreed to it, my memory is that we had the order rewritten, typed off again. I then took the Executive Order in that form to the White House. I advised President Harding, personally, that the order as then presented to him with the modification which I had obtained was agreeable to both Secretary Denby and Secretary Fall. He thereupon signed the order. My recollection is clear in this matter, namely, that I went to the White House directly from Secretary Fall's office in the Department of the Interior. I do not recall having heard at that time of the various letters of transmittal.

When the draft of the order was originally presented to me I was not personally in favor of mak-

(Testimony of Theodore Roosevelt.)

ing the transfer but I became convinced afterwards that it was the correct thing to do. I became convinced, after going over the people, and machinery necessary to look out for oil work, that the Navy Department was not provided with sufficient practical machinery to take care of the development which circumstances had made necessary and that, therefore, the Secretary of the Navy's decision was correct in the matter. After obtaining the modification in or amendment to the draft of the Executive Order, as I have already explained, I felt satisfied that the interests of the Government could be guarded, because I was confident that no leases could be signed without the supervision of the Secretary of the Navy and the naval officers charged with the responsibility for the reserves; after this amendment had been obtained I felt that the transfer would be all right, for, as I have already said, after investigating the matter, the organization and the equipment of the Interior Department for handling oil matters were shown to be very much superior to those of the Navy Department.

I did not take any part in the actual negotiating of the contract dated April 25, 1922, or the contract dated December 11, 1922, or the lease dated December 11, 1922, between plaintiff and the Pan American Petroleum Company. As regards the contracts, I concurred in the policy of exchanging oil in the reserves for oil in storage at the points where it would be available for use by the Navy in any emergency which might confront the country,

(Testimony of Theodore Roosevelt.)

because I was informed that the oil was being drained from the reserves and I accepted this statement at its face value and said that I thought that those in charge were correct in the plan they had adopted in arranging to have the oil taken out and conserved for Government use in tanks above the ground. I knew of the war plans of the Navy which called for the storage facilities, part of which are provided for in the contracts dated April 25, 1922 and December 11, 1922, between the plaintiff and the defendant Pan American Petroleum & Transport Company, and I approved of the policy of providing for an exchange of crude oil in the reserves for oil and other petroleum products in usable form and the storage and incidental facilities provided for at Pearl Harbor, under the plans and specifications which formed a part of the two contracts hereinbefore mentioned. [593—510] This approval was based, as I have said already upon the assurance given me by those in charge, that the oil was being drained from the reserves and could not be retained in the ground.

Such communications as concerned these contracts which came up during Secretary Denby's absence, while I was Acting Secretary of the Navy, were signed by me. I was informed with respect to the subject matter at the time I signed the same and acted knowingly in the premises. I do not recall signing any letters directing that information regarding the fuel oil storage facilities to be provided at Pearl Harbor, Hawaii, be kept confidential,

(Testimony of Theodore Roosevelt.)

but if any such letter was presented to me and I signed it it was because all our naval authorities regarded the information concerning our oil storage as confidential and as a matter that should be, in the interests of the Government, kept secret. There was no reason other than this in so far as I know, for any official or officer of the Navy Department desiring to keep secret the facts relating to the Pearl Harbor fuel projects which are involved in this suit.

In so far as the actual leasing of naval reserve land is concerned, I had no part in the negotiating or making of any of those leases. That was not in my particular bailiwick in the Navy Department. The Navy Department is a very big Department and its various functions were allocated to various people. I was doing other work. It fell to me to take the part I have already told about in connection with the particular proviso in the Executive Order which the President signed. It did not fall to me but to others in the Navy to handle whatever was handled in connection with the leases." [594-511]

Testimony of John Keeler Robison, for Defendants.

JOHN KEELER ROBISON, called as a witness on behalf of the defendants, testified that he is an officer of the United States Navy, with the rank of Rear Admiral; he entered the Naval Academy in 1887, and was commissioned in 1893, and his Naval

(Testimony of John Keeler Robison.)

service dates from the time of his entrance as a midshipman in the Academy; in 1893, immediately after being commissioned as an assistant engineer in the Navy, he had duty for a few months in the Bureau of Steam Engineering, as it was then called; briefly and generally, he has had about all the classes of duty as an officer of the Navy that comes to a man that works at it for 35 years, both sea duty and shore duty; he has been at sea for something over 18 years, in all of the Seven Seas, and has been on shore duty practically everywhere, having had the usual run of duty that comes to an officer as he passes from youth to long service; as regards his periods of duty in the Bureau of Engineering, in 1894 and '05 he was in that Bureau for a few months, and in 1898-99 was there for a little over a year; in 1909 he commenced a tour of duty in that Bureau which lasted two and one-half years; he had been there three or four times for other short periods, and performed practically all of the subordinate duties within that Bureau; between 1911 and up till 1920, he was on duty in Washington, only temporarily for a day or two at a time, and was not, between the last mentioned years, regularly attached to any duty in that city.

Early in 1920 the witness was assigned to duty in the Division of Operations, in the office of Chief of Operations, at Washington, and for about a month, commencing the middle of March, 1921, he was attached to the Secretary of Navy as his personal aide, during a trip of inspection of the

(Testimony of John Keeler Robison.)

fleet, and of certain shore stations, and foreign activities of the Naval [595-512] Service; from and after October 1, 1921, the witness has been Engineer in Chief of the Navy, Chief of the Bureau of Engineering in the Navy Department, which office has the rank of Rear Admiral attached to it, he still holds that position; there are certain offices in the Navy Department that are part of the civil establishment of the Executive Department of the Navy; they are called chiefs of operation in the Navy Department, and have attached to them the rank of Rear Admiral; the heads of these Bureaus have, under the law, authority to issue orders in the name of the Secretary of the Navy, and there is no restriction except such particular restrictions as are set forth in the law creating the various Bureaus, as to the rank, in his own right, of the officer who may be detailed, by the President, with the advice and consent of the Senate, to the office of chief of a Bureau so that a commander or a captain in the Navy, who is appointed by the President and confirmed by the Senate to be Chief of the Bureau of Engineers so long as he is in that office, has the rank of Rear Admiral, which rank is attached to the office, and when his tour of duty in that office ends, he goes back to sea in his own rank; the witness held the rank of Rear Admiral in virtue of his occupancy of the office of Chief of the Bureau of Engineers, from October 1, 1921, until June 5, 1924, since which date he has been a Rear Admiral in his own right, by appointment of the President.

(Testimony of John Keeler Robison.)

His present commission as Rear Admiral bears date June 5, 1924, and his appointment to that rank was made by President Coolidge. He is at this time performing the duties of Chief of the Bureau of Engineering.

Admiral Robison knows Edward L. Doheny, Sr., and Edward L. Doheny, Jr.; he became acquainted with the latter in April, 1917, aboard the U. S. S. "Huntington," at Mare Island, California; he was a Captain of that ship, and Doheny, Jr., was [596—513] a young lieutenant of the California Naval Reserve, and Robison swore him into the service as an officer of the United States Navy; Doheny, Jr., remained under the witness' command thereafter for several months during which time the ship had been over to France, or nearly to France, escorting troops; they left Mare Island for a trial trip, and were for a time at Pensacola, Florida; when Doheny, Jr., became an officer on Admiral Robison's ship, the latter did not know, and had never heard of, Doheny, Sr., and he was first introduced to the latter when the father came aboard ship to see his son at San Francisco, and later when Mr. Doheny visited his son aboard the "Huntington" while she was laying off Pensacola, at which time witness thinks he saw Doheny, Sr., once or twice, but he can only remember one of the visits when they had a conversation in which the Naval Oil Reserves were mentioned; at that time witness was Captain of the "Huntington"; Mr. Doheny had come over to see his son, and lunched with the witness,

(Testimony of John Keeler Robison.)

the son being busy, and unable to see his father until the work then in hand was completed; during the course of the luncheon, oil was the subject of conversation as it always is with Mr. Doheny, witness has found, and Admiral Robison mentioned that the Navy had some oil reserves of its own, and was therefore somewhat interested in that subject; witness had been in Washington when the oil reserves were originally contemplated and created, and had advised their being created, and he had no knowledge of what had been done, in detail, between the periods of 1909 and 1910, and this period of 1917; he thought the reserves were being handled well, and said to Mr. Doheny that he thought so, and in substance Mr. Doheny said: "Yes; your Naval oil reserves are something that I know a good deal about." Witness remarked, "They are going along all right, aren't they?" Mr. Doheny replied, "They are going along all [597—514] right if you want to lose them. One of them is no good now and the other won't be much good long"; Admiral Robison expressed astonishment, and Mr. Doheny told him that outside parties, owning lands, either geographically within the outside limits of the reserve or bordering the outside limits thereof, were, through wells that they owned, getting the oil out of the ground, and that we would not have any left before long; that is the whole of the conversation regarding the California Naval Reserves that this witness had with Mr. Doheny at that time.

After the War, the acquaintanceship of the wit-

(Testimony of John Keeler Robison.)

ness and Mr. Doheny, Sr., and Doheny, Jr., ripened into a friendship, and they are friends right now.

Prior to his appointment as Chief of the Bureau of Engineering, on October 1, 1921, Admiral Robison did not, orally or in writing, communicate with either Doheny, Jr., or Sr., and ask their assistance in obtaining his promotion; he does not think either of them knew anything about it until it was an accomplished fact; he thinks he gave to Doheny, Sr., information by letter, which he wrote, dated October 6, 1921 (Exhibit No. 23); he has no knowledge of any communication with either of the Dohenys on this subject before that time; before being appointed Chief of the Bureau of Engineering, and while Mr. Denby was Secretary of the Navy, from March to October, 1921, Admiral Robison did not have any connection with the oil reserves; he had nothing whatever to do with the executive order of May 31, 1921, or the steps leading up to its promulgation; the witness first became a member of the Secretary of the Navy's council October 1, 1921, and after becoming Chief of the Bureau of Engineering, on that day, his first official duties in connection with the naval petroleum reserves began on October 8, 1921, by orders received by him directly from the Secretary of the Navy, Mr. Denby; Secretary Denby sent for [598—515] the witness on that date, and called attention to some letter which he objected to, which had been placed in his correspondence for signature, and asked why witness had allowed such a letter to be treated that

(Testimony of John Keeler Robison.)

way; witness responded that he did not know anything about the letter, which was about some oil matter; that such matters were handled for him directly by his own immediate subordinate, Commander Stuart; that witness knew from Stuart what happened after it had taken place, and that he knew nothing about this letter; Secretary Denby then said, "This is a case of an unauthorized bureau then?" To which Admiral Robison replied that, on the contrary, it was a case of an office that was established by the Secretary of the Navy himself, for his own information in connection with oil matters, the Fuel Oil Office, so called; "Well," said the Secretary, "I want you to handle that matter hereafter, yourself, and I don't want Stuart to do it, except under you."

Subsequently, about October 18, 1921, these orders were reduced to writing. Commander Stuart at that time was on duty in Washington, and had office space in the Bureau of Engineering, next door to the office of the witness; Stuart was a line officer, who was restricted to the performance of engineering duties, and at that time was on duty, but was not directly under the Chief of the Bureau of Engineering, prior to the conversation between the witness and the Secretary of the Navy above narrated; on October 24, 1921, Stuart was detached from duty in the Office of Secretary, and thereafter his duties were as witness' subordinate (Exhibit "D"); on April 5, 1922, Stuart was detached from duty in Washington, and ordered to duty at

(Testimony of John Keeler Robison.)

Charleston, South Carolina, upon the recommendation of the witness; this was a very important duty, and one that Stuart desired; prior to the time that Stuart was detached on April 5, 1922, from Washington duty, [599—516] no one outside of the Navy Department made any request of witness to have Stuart detached from duty in Washington, and sent elsewhere.

When witness took up the duties assigned by the Secretary of the Navy in connection with the Naval Petroleum Reserves, in 1921, he familiarized himself with the then status of the reserves by using Stuart's card index, and getting hold, from the files of the Department, of all the information he could, bearing upon the existing conditions in the reserve; in examining these files, witness saw letter from the Secretary of the Interior, dated July 23, 1921 (Exhibit 13), and also found in the files memorandum from Admiral David Potter, Chief of the Bureau of Supplies and Accounts, dated July 29, 1921, in connection with this Exhibit 13; witness also read at that time communication of July 29, 1921, from the Secretary of the Navy to the Secretary of the Interior, Exhibit 14; he also found the Mark L. Requa report, of 1916, which was brought to his attention by Commander Stuart, and he read it; he also examined maps in the Bureau of the Naval Reserves; No. 2 was the outstanding one; the department had reports from Landis, in California, that indicated to witness that conditions needed some correction, and witness is free to say,

(Testimony of John Keeler Robison.)

in spite of public criticism, that he could not foresee at the time, and that he does not see just now, that he did give the conversation that he had with Mr. Doheny, four years previously, no inconsiderable weight; he means the conversation he has testified to as having taken place on the Huntington, and because he uses that method himself, as an engineer, obtaining all the information he can on subjects from experts thereon, he recalled that conversation; with the records of the Department before him, and with Commander Stuart's help, witness went over the conditions that then existed in the reserves with relation to what [600—517] steps would have to be taken, if any, regarding that; he found that reserves were suffering, or the Navy was suffering worse than the reserves were; these naval reserves are Government property, in the broad sense, and the Government got something back from them in a broad sense, because the treasury was receiving some of the usufruct, had got a little from the royalties in the form of cash; but the reserves are really naval property, and the Navy was getting nothing; that is one thing witness found, and that he did not like, and determined to correct if he could; another thing he found was that Reserve No. 2, every alternate section thereof, was in the possession of private owners, and was, in 1921, being developed; there was not but one thing to be done with No. 2 Reserve, and Stuart agreed to that, and that was to develop it. if the Government could get any-

(Testimony of John Keeler Robison.)

thing out of it at all. Obviously, there was something to be done in the case of No. 2 Reserve. In the case of No. 1 Reserve, as shown by the chart (witness referred to Exhibit "XXX"), there was a condition up in the northeast corner which looked bad to witness; he does not know what oil is like under the ground, but it looked to him as if the equivalent of a pool was being tapped by the Standard Oil Company of California, and that the Navy was getting nothing out of it; he figured "we would get it if we could"; he went over to the Interior Department and talked with Director Bain, and his chief petroleum technologist, Mr. Ambrose, and advised with Secretary Fall, who sent him to these others; he does not remember if before going to the Interior Department he was informed at that time in the Navy Department of any estimate as regards the amount of oil that had been drained out of No. 1, but he knows there was a lot of it that had been lost, and that the Navy knew had been lost, but did not know how much; as to what estimates came to him in the discharge [600a—518] of his duties as regards the quantity of oil that had been drained out of Reserve No. 1, witness obtained estimates from the Bureau of Mines, and in the Navy Department; in the Navy Department, Stuart agreed there had been lost a lot, but he did not know how much; in the Bureau of Mines, they told witness there had been lost close to a million dollars' worth of oil out of each of the Standard Oil

(Testimony of John Keeler Robison.)

wells; he does not know whether there is any truth in that or not, but that is what he got; \$800,000 a well, he thinks, was the figure they gave him as a minimum loss to the Government, there being over 22 wells in there in Section 36.

Upon taking the duties thus assigned to him by the Secretary of the Navy, in October, 1921, Admiral Robison read the executive order of May 31, 1921, and saw the Secretary of the Interior on the subject; as to whether he talked to Secretary Denby after he had examined the files of the Department, and before seeing Secretary Fall, the witness "talked to Secretary Denby right along"; he told Secretary Fall that he was sent there by the Secretary as his representative, and that he handled all oil matters in the Navy Department; Secretary Fall said he was glad to see witness, and introduced him to Dr. Bain and Mr. Ambrose and Mr. Safford, and Judge Finney, the latter being a re-introduction, as he had met Judge Finney about 30 years ago, when he was in the Land Office.

Admiral Robison saw Secretary Fall a good many times in the month of October, 1921; during his first conversation, about which he has been testifying, on October 9, after advising the Secretary of his mission to the Interior Department, witness told him that he did not like much the idea of Naval property being dissipated without profit to the Navy, and that he did not know how to stop it; Secretary Fall called attention to the fact

(Testimony of John Keeler Robison.)

that he had made a suggestion in the July letter [601—519] (Exhibit 13) which witness had not at that moment read, and the latter thereupon stated he would look into the matter, but in the meantime it seemed to him that there was some way, that there certainly must be some way, "in which we could take care of our own. He said he would help us"; Secretary Fall did not tell him of the trip which the Secretary had made out West prior to October, 1921. From and after October 9, Admiral Robison was busy, going over a considerable mass of records in the Navy on this subject; as these came to hand, he read them and grasped the reports that he received from Commander Stuart; he went over to the Interior Department and talked with Dr. Bain and Mr. Ambrose, and, upon occasions, with the Secretary himself; then there were gradually evolved a plan set forth in detail in the letter from the Secretary of the Navy to the Secretary of the Interior, dated October 25, 1921 (Exhibit 24); as to whose composition that letter is, that letter is the product of Secretary Denby and Admiral Robison; the witness wrote it first, and Secretary Denby and the witness went over the rough draft, and then Admiral Robison wrote it in the smooth form that Secretary Denby agreed to, and that is the way it was sent; prior to the time the letter of October 25 was drafted, and while he was having conferences with Fall, Bain and Ambrose, the witness saw Secretary Denby on the subject every

(Testimony of John Keeler Robison.)

time he saw Secretary Fall; either before, or perhaps before, and always afterwards; witness made himself genuinely a personal representative of the Secretary of the Navy, and he had to inform himself of Mr. Denby's ideas, and plans, in order to accomplish that; he always made known to the Secretary of the Navy the subject of any conference; the details were reported to the Secretary, and sometimes the plans, the projected conference, was discussed before it took place; so that it may be said that Secretary Denby was informed by the [602—520] witness of the information concerning these reserves, and their conditions, just as he gathered it, whether from the Navy Department files, or from Interior Department conferences; he was given the information concerning the condition of these reserves by the witness just as fast as the witness got them.

Thereupon, there was handed to Admiral Robison Exhibit 24, and he testified that Secretary Denby gave to that letter, he thinks, the name of "Policy Letter," and that is the term used thereafter by Admiral Robison and Secretary Denby in referring to it in their conversations about it; prior to the writing of the October 25, 1921, letter, those in the Interior Department with whom he discussed the points therein set forth were primarily Dr. Bain and Mr. Ambrose; witness is unable in his recollection to distinguish between these two gentlemen; he was with them both and talked these points over with one or the other or both of them; he did not

(Testimony of John Keeler Robison.)

know either of them before this time; he got information from each of them, and he does not now know which one of them made to him one statement and which made to him some other, but they were agreed in their recommendations, and in their reports; taking up the policy letter and stating in respect thereto, and answering as to what he learned prior to this writing, and what he told Secretary Denby, the witness testified, "In paragraph 1 of that letter," in which appears, "that arrangements will be made by the Interior Department to have Naval Petroleum Reserves Nos. 1 and 2 drilled with offset wells in every case where adjacent property is drilled," that was the definite establishment of a policy of offset drilling for the protection of our reserves. That came about as a result of our belief—and by 'our' I mean Secretary Denby and myself—that it was necessary. That belief was founded upon information received from the sources I have mentioned." [603—521]

Bain and Ambrose were the last sources; the first sources were the reports from Landis in the field; other sources were the confirmatory opinion of Stuart in the matter; another source was this report of Mark L. Requa; there was no contradictory evidence, and there was a mass of evidence in favor of the necessity of drilling.

(Counsel for the plaintiff moved to strike the statement that "there was no contradictory evidence and there was a mass of evidence in favor of the necessity of drilling"; and the Court advised

(Testimony of John Keeler Robison.)

the witness to state what the sources were instead of the general characterizations, so that the Court could decide just what information witness is referring to.)

Taking up the second point in the policy letter, reading "That the amount of drilling with consequent exhaustion of the Reserves shall be kept as low as practicable without risking the depletion of the reserves by other parties," witness does not know that he discussed that with Bain, Ambrose and all of them, but he discussed that with Secretary Denby, and with Secretary Fall, without question, and it was agreed to by them.

The point in the October 25 letter with regard to getting fuel oil for crude oil was suggested to witness by Admiral Potter's recommendation to the Secretary of the Navy, and Secretary Fall's letter of July (Exhibit 13); also the Navy cannot use crude oil for fuel on ships of the United States Navy; it has to be used in some exchange form in order to have it for any use in the Navy, and witness brought that up from that point of view himself; it is necessary for crude oil to go through some refining process, in which the lighter gasoline products must be taken off in order to make it into fuel oil, safe to handle, to the vessels, and that point was discussed preliminarily to writing the October 25 letter; prior to the writing of the letter, the statement that the [604—522] exchange was to be effected "on as favorable terms as it was possible to obtain," that was not talked over with anybody except Secre-

(Testimony of John Keeler Robison.)

tary Denby, because that was put in there without talking to the Interior Department, for the Navy's own protection; as regards the contents of paragraph 4 of this letter, that was the suggestion of Admiral Robison; he discussed with Mr. Denby the urgent need of a considerable fuel oil supply in Pearl Harbor, his talk on that subject with Mr. Denby being in March, 1921, while witness was the Secretary's special aide on the trip to which he has referred; he had been working for over a year on the needs of Pearl Harbor; this same subject was discussed with Secretary Denby in October, 1921; as regards what plan the Navy Department had to use fuel oil which was obtained in exchange for crude oil from the reserves, there were several plans; at that time the current appropriation for the Navy, for the sustenance of the Navy during the fiscal year, and for the purchase of fuel and its transportation, was too small to accomplish the operating plans of the department, and a deficiency in that appropriation was imminent; it was desired—the memorandum from Admiral Potter (Exhibit "G-4") states that desire—to use the royalty oil for the purpose of accomplishing the current needs of the Navy, without charge to the current annual appropriation, thus enabling the department to accomplish its plans without incurring a deficit; that subject was discussed at meetings of the Navy Council, and at the time of the writing of the letter of October 25, 1921, the Secretary of the Navy had not announced his decision as to whether to use or not to use this

(Testimony of John Keeler Robison.)

oil for current purposes; Admiral Robison discussed this matter with Secretary Denby upon repeated occasions other than that at council meetings; the witness was against the use of the reserve for the accomplishment of the current needs, and recommended that the reserve be used for the accomplishment of a military [605—523] reserve.

In point 5 in the policy letter, the last two words "or otherwise" were not in the letter as originally written; those words were put in by Secretary Denby after the witness reported to him that Secretary Fall recommended it; witness told Secretary Denby that the handling of public lands was something that was so frequently done by the Interior Department that he thought they had better be given a chance to do it in their usual way; the words were not in the first draft, but were written in the final draft, before that was taken by the witness, with his own hand; as regards the provision in the letter under discussion, "That all leases and contracts, except as provided in paragraph 6, will be arranged and consummated by the Interior Department, copies of same being furnished to the Navy Department as a matter of information and record only," Secretary Denby wanted that paragraph in order to be relieved of specific approval of each of those leases in the case of areas that were under the law controlled by the Interior Department; the law is something of which witness does not know anything, but the result of the way it was working out was that Secretary

(Testimony of John Keeler Robison.)

Denby was called upon to investigate and pass upon problems that were, he believed, entirely within the purview of the Interior Department.

Prior to the writing of the policy letter, witness was the only one, that he knew about, that made any request of the Interior Department as regards making every effort to expedite the exchange of royalty crude for fuel oil, and deliver all the latter at Pacific Coast points. The argument on those points made by the witness to Secretary Fall, Dr. Bain or Mr. Ambrose, as to why that expedition was wanted, was that as long as that royalty oil was sold, it was no longer Navy property; if it was transformed by exchange into [606—524] anything else, Naval value could be gotten out of it; that at the time the Navy was losing a thousand dollars a day; the number of barrels of storage which it was desired to have at Pearl Harbor was 1,500,000 barrels, and this was, so far as witness knows, never communicated to the Secretary of the Interior prior to this letter of October 25; the fact that the Navy required considerable quantities of fuel at Pearl Harbor was made known; the amount was the one which had been determined theretofore by competent authorities in the Navy Department as the exact amount requisite to meet the emergency needs of the Navy, and the Secretary of the Navy finally approved that figure; prior to that approval by the Secretary of the Navy, the General Board of the Navy, witness believes, determined that to be the amount; witness was not present at that time;

(Testimony of John Keeler Robison.)

upon being requested to state his official opinion with respect to that matter in the Navy Department, he knows he was not in Washington at that time; upon being requested to state when, in 1921, he became familiar with the information in his official capacity, where and upon what authority that amount of 1,500,000 barrels had been determined upon, Admiral Robison answered: "That was in a privileged communication"; as to what he means by a privileged communication, he answered, "There are in all professions, I think, certain communications that are privileged"; that amount is stated in some communication or document in the Navy Department that he describes as privileged; that document originated, he thinks, in the General Board, he is not sure; he does not know what planning section of the General Board acted on that.

Upon being asked the direct question whether he felt free to testify here about the war plans of the Navy Department, the witness answered, "No, sir"; asked if that is not the reason why he did not answer the question just above, he said [607—525] he thought he had answered it; asked whether that was part of the war plans recommended by the General Board and approved by the Secretary of the Navy, he answered, "I think I would prefer not to answer that question, sir, unless it is absolutely essential. It is the duty of those few officers who have any access to such plans for the national defense as may be in existence to refrain

(Testimony of John Keeler Robison.)

from divulging them except in case of necessity. I would prefer not to answer that question. However, this amount was the exact amount that had been determined by Secretary Daniels as Secretary of the Navy as the amount that should be placed at Pearl Harbor for a permanent reserve of fuel oil at that point."

Thereupon the following occurred:

"Admiral, I put to you the direct question whether you are now under any orders with regard to testifying on that subject?

A. I do not think I quite understand your question, sir.

Q. I want to know if you have any orders from naval authority now with respect to the subject of your testimony here with regard to what can and what cannot be disclosed? A. Yes, sir.

Q. Have those orders been reduced to any form of writing?

A. I have received instructions, which I have, and which are placed in writing.

Mr. HOGAN.—I take it, Mr. Roberts, there are certain things that we all understand we do not want to go in. Is there any objection to the Court looking at those instructions as to their going in the record?

Mr. ROBERTS.—Of course those instructions are not mine.

Mr. HOGAN.—No, but I think it will save me a good deal of time.

Mr. ROBERTS.—I have no objection.

(Testimony of John Keeler Robison.)

Q. (By Mr. HOGAN.) With the consent of counsel I ask that you exhibit to the Court your instructions, Admiral, whatever form they are in.

The COURT.—I shall also desire that counsel on the other side see them, gentlemen.

Mr. HOGAN.—We do not want to see them. If counsel on the [608—526] other side desire to see them I suppose they may look at them.

Mr. POMERENE.—We are entirely willing that the Court see them, your Honor. We do not care to see them. We have no desire to.

The COURT.—Well, it is not a question of whether you have a desire, but do you desire the Court to see them without having them offered?

Mr. POMERENE.—Yes, we are entirely satisfied to have the Court see them.

Q. (By Mr. HOGAN.) Will you hand the Court whatever you have there?

(Witness hands paper to Court, which is returned to the witness.)"

Admiral Robison continued testifying, that subsequent to the writing of the policy letter of October 25, 1921, he had conferences with Secretary Fall and other officials of the Department of the Interior during the month of November, 1921, on the subject of naval reserves; in that month, during a conversation with Secretary Fall, the latter criticised the high cost of naval fuel oil storage facilities, and said that he was of the opinion that they could be obtained for much less than we were spending or had been spending on facilities for

(Testimony of John Keeler Robison.)

current use recently constructed by the Navy; witness had given him, Secretary Fall, figures as to the costs obtained by witnesses from records in the Bureau of Yards and Docks; Mr. Fall said he was of the opinion that the thing could be done for much less, and Admiral Robison said, "Well, if it can be done cheaper, we want to do it"; however, naval fuel storage facilities, witness explained to the Secretary, involved not merely tanks, but tanks in which fuel was stored and which are protected from fire hazards, from bombing hazards, from defects in pumps and in piping, to an extent not usual with commercial installations, so that the Navy's costs will normally be considerably higher; witness explained this to Mr. Fall, but agreed that it was wise to obtain information as to [609—527] what tanks would cost in commercial installations, and asked him to get some figures; he said he would get them.

On November 29, 1921, witness received from Secretary Fall letter bearing that date, Exhibit No. 34, with which was enclosed Mr. Doheny's letter of November 28, 1921, Exhibit 33; he received it in his office in the Navy Department; he does not recall the same having been delivered to him by Mr. Cotter; he has no recollection as to that one way or the other; all that he remembers is that these letters reached him November 29; he is able to state that only by reference to the written record of the time, having refreshed his memory by the minutes of the Navy Council meeting, which was held in the after-

(Testimony of John Keeler Robison.)

noon of that day, at which the subject of oil storage was discussed; he had then received the above referred to letters, and he referred to them during the council meeting, but whether he referred to the contents of the letters themselves, he does not now recall.

There was thereupon identified, offered and received in evidence as Defendants' Exhibit "I4," the following extract from the stenographic minutes of the meeting of the Navy Council, held November 29, 1921, reading as follows:

DEFENDANTS' EXHIBIT "I4."

Notes of Minutes of Navy Council Meeting,
November 29, 1921.

The council proceeded with business at 2:10 P. M.
Present: Secretary Denby, presiding; Assistant Secretary Roosevelt; Admiral Coontz; Rear Admirals Washington; McVay; Robison; Taylor; Potter; Stitt; Latimer; Moffett and Smith; Captains Bakenhus (representing the Yards and Docks) and Willard; Commander Rowcliff; Major General Lejeune.

Item No. 2.

Admiral COONTZ.—The principal things I think we should take up this afternoon are (matters) from co-ordinators of the Budget; second, as to the fuel oil, the freight and transportation, and the question as to their connection with the winter cruise. I think first Admiral Robison can tell us

of the oil situation, and Latimer can tell us as to the legality of using it.

Admiral ROBISON.—I take it you are referring to reserve oil.

Admiral COONTZ.—I think that the Secretary wants to know—the supply and how large it is going to be and [610—528] Latimer will tell us if we can use it.

Admiral ROBISON.—We have assurance of the Department of the Interior they can turn it over to us either as fuel oil at such points as we desire or as reserve oil. We have furnished a list of places where we would like to have it. The amounts now available are 60,000 barrels, total will be available January 1st. It is coming at the rate of 1000 barrels a day. This will increase about March or April, and between now and the end of the fiscal year it is estimated we will have 500,000 barrels of fuel oil. The questions as to when and where you are to use it is something more or less for you to decide, and it is also more or less to be decided as a matter of law. As a matter of policy the idea of this whole thing is to transform this unavailable, more or less intangible naval fuel oil reserve into a tangible reserve to be located as in accord with our plan for national defense. The first step was to provide at Pearl Harbor storage for 1,500,000 barrels fuel oil. The tanks for containing this would be entirely paid for by the royalty on the oil. I have here a definite proposition to supply that; a proposition for the comple-

tion of the entire Pearl Harbor Project during the next calendar year. The other steps in the matter of the provision of fuel oil reserves along the Pacific Coast could in accordance with this plan, could be completed within less than five years, that is from the Panama Canal to Puget Sound. That is what I hope to accomplish. I think that is the Secretary's idea.

SECRETARY.—We had that at Cabinet this morning. It is between the two Departments. First the question in my mind is whether we have (the) legal right; second, whether it is desirable to use it now. We might better store it which conforms to the theory. The Secretary of the Interior says if we didn't tackle it now we would not get any three months from now. They are getting 4,000 barrels a day now from one well.

Admiral ROBISON.—A message from the Interior Department within five minutes says the gas pressure is lessening and decreasing; it is very disappointing. They will experience a loss in the payment of royalty to the government.

Admiral COONTZ.—I brought it up for this reason: Inside of two months we will run out of fuel.

Admiral ROBISON.—You can get 500,000 barrels for the rest of the year. It will not do over 40 per cent of your Panama cruise. I think you ought to use every bit of this for reserve. * * *

SECRETARY.—I don't think we can use that oil. I haven't seen the law.

Admiral LATIMER.—The law authorizes you to do anything in the world with that oil—to drill, exchange, use, sell; do anything you want. Your powers couldn't be broader. The only limitation in regard to oil lands is the limitation placed upon you by the Executive order.

SECRETARY.—You mean the Commander-in-Chief's order?

Admiral LATIMER.—That is the only thing.

SECRETARY.—I don't much fear what the law is. I want things like this to go to Congress. I want to explain to Congress. I would rather not have the Navy use it. Our appropriation is insufficient and that use of the oil is only a subterfuge.

Admiral ROBISON.—All I have got to do is to say on this letter is we can get the tanks built.

I cannot say, of course, as to these tanks until I have seen the plans and make sure these plans correspond with our specifications. I sent a memorandum to the Chief of the Bureau of Yards and Docks some three weeks [611—529] ago but Bakenhus has not seen it. * * *

Admiral ROBISON.—What will I do about these tanks at Pearl Harbor?

SECRETARY.—I will have to go into that further.

Captain BAKENHUS.—There is some question about appropriation.

Admiral ROBISON.—It will take us five years to complete our plan, for our war plan reserves on the Pacific.

(Testimony of John Keeler Robison.)

Col. ROOSEVELT.—These filled in five years will put us on war plan reserves?

Admiral ROBISON.—Yes, sir.

SECRETARY.—That is a matter of national policy I do not want to decide until after I have seen the President and probably will take it up again with Congress. * * *

Admiral LATIMER.—With regard to these oil lands (reading the law)—('The Secretary of the Navy is directed to take possession of all property.' etc., to 'conserve,' 'develop,' etc.)

SECRETARY.—Under that power we can adopt the policy.

Admiral ROBISON.—Shall I go ahead with those tanks?

SECRETARY.—Not until I have seen that committee.

(Referring to the Congress committee.) [612—529½]

Of the persons present at that Navy Council meeting, the witness testified that Admiral Coontz was Chief of operations, the senior Naval officer, who was an adviser to the Secretary of the Navy; the witness made to the Council the statement attributed to him to the effect that, "A message from the Interior Department within five minutes says the gas pressure is lessening and decreasing; is very disappointing. They will experience a loss in the payment of royalty to the government"; as to his recollection on that, the wells then being brought in on Section 1 strip were less productive

(Testimony of John Keeler Robison.)

than they had expected; and the letter of November 29, 1921, from Secretary Fall, included that statement; he testified that his statement, "I have here a definite proposition to supply that, a proposition for the completion of the entire Pearl Harbor project during the next calendar year" referred to tanks of oil, and that proposition was Mr. Doheny's letter of November 28, 1921, to the Secretary of the Interior, which was the most definite proposition witness had at that time.

His statement attributed to the witness in the above quoted minutes, "All I have got to do is to say on this letter is we can get the tanks built," should have been *that* all that he had to say on that letter, referring to the letter of November 28, 1921, to the Secretary of the Interior, is, "we are assured that we can get the tanks built."

Captain Bakenhus, referred to in the minutes, was an officer representing the Chief of the Bureau of Yards and Docks at that Council meeting.

Thereupon, there were identified, offered and read in evidence, as Defendants' Exhibit "J4," extracts from the minutes of Navy Council meeting held Friday, May 20, 1921, as follows:

DEFENDANTS' EXHIBIT "J4."

"Present: Denby, Roosevelt, Coontz, Washington, McVay, Griffin, Taylor, Stitt, Potter, Lejeune, Latimer, Smith. No. 12.

The Secretary stated that in the matter of Naval Oil Reservations in Wyoming and California—

these reservations would be turned over to the Interior Department as trustee for the Navy." [613—530]

There was next identified, offered and received in evidence minutes of the Navy Council meeting, in so far as they pertained to this subject, held June 30, 1921, which as Defendants' Exhibit "K4" read:

DEFENDANTS' EXHIBIT "K4."

"Extract from Stenographic Notes of Council Meeting, Thursday, 30 June 1921.

Present: Secretary Denby.

Assistant Secretary Roosevelt.

Admiral Coontz.

Rear Admiral McVay.

Rear Admiral Washington.

Rear Admiral Griffin.

Rear Admiral Taylor.

Rear Admiral Potter.

Rear Admiral Parks.

Major General Lejeune.

Rear Admiral Smith.

Captain McCullough, M. C., representing
M. & S.

* * * * *

No. 16.

Admiral POTTER.—The question of securing 12 tankers from the shipping board: We built for them during the war. We got five, and seven more

we could get. We need them for floating oil storage on the west coast. I understand an executive order is necessary. Is your office following that up?

Admiral COONTZ.—Yes, but we do not want to issue order until (after) taking it up with shipping board.

Admiral TAYLOR.—It was their money that paid for them.

Admiral COONTZ.—I think not.

Admiral POTTER.—It was built for them.

Admiral COONTZ.—I will handle it.

SECRETARY.—In regard to oil, it is comparatively easy matter to include in the price of oil the price of storage and the question whether we ought to do that where necessary to exclude oil, whether we ought to make a contract including in the price the tankage, so that nothing will come out of the royalty.

Admiral GRIFFIN.—Secretary Fall said he was going to sound them out on that."

There was thereupon identified, offered and received in evidence extract of stenographic notes of minutes of Navy Council meeting, held 9:10 A. M., October 20, 1921, reading:

Present: Secretary Denby, Asst. Secretary Roosevelt, Admiral Coontz; Rear Admirals Washington, McVay, Robison, Taylor, Potter, Stitt, Latimer, Moffett, Smith; Captain Bakenhus (representing Y. &

D), Captain Willard, Commander Row-cliff.

* * * * *

Admiral POTTER.— * * * Under Fuel and Transportation we are asking for a deficiency of 12½ million. They gave us \$17,000,000. We expended in 1921 \$36,000,000. [614—531] We are endeavoring this year to bring it to \$30,000,000, and the next year \$25,000,000.

SECRETARY.—That is on ordinary activities of the fleet?

Admiral POTTER.—Yes, sir. That is what you are doing every day, unless you change the plan of Operations—

SECRETARY.—The plan of Operations?

Admiral POTTER.—Yes, sir; the present plan of Operations.

SECRETARY.—Unless we can get oil and open the naval reserves and exchange the oil for fuel oil. I don't quite yet know whether we would have to charge that up with the Budget Commissioner's office.

Admiral ROBISON.—I have not instructions yet but want to see the Secretary of the Interior. I hope we can get it. I think you can expand it any way, one still new, 3 of course still in the ground. One of those is no use to us whatever; might as well get the oil out of it.

SECRETARY.—The Wyoming reserve keep.

Admiral ROBISON.—No small portion of believe in continuing contracts at the highest war

(Testimony of John Keeler Robison.)

price for the fuel that we are using which fuel contracts require us to spend for fuel today \$3.25 per barrel at a time when fuel normally would be obtainable at less than one-half of it. I think that will explain your deficiency.

Col. ROOSEVELT.—I told them that would be a very good thing to put in.

ROBISON.—You might say no appreciable dividend has been received from the oil taken from the reserves. All has been turned into the Treasury under Miscellaneous Receipts."

During the reading of the foregoing minutes of the Navy Council meeting, Admiral Robison that in speaking of the Naval reserves as therein reported as "one still new, 3 of course still in the ground; one of those is no use to us whatever; might as well get the oil out of it," he was referring to Naval reserves 1, 2 and 3; reserve No. 2 was the one referred to as "no use to us whatever"; No. 3 "still in the ground" referred to the Wyoming reserve, Teapot Dome; by the statement "no appreciable dividend has been received from the oil taken from the reserves," the witness meant that the Navy had spent a considerable amount of money since the reserves were created, without an iota of Naval advantage from the existence of these as Naval reserves.

After the meeting of the Navy Council on November 29, 1921, minutes of which have been put in evidence as Exhibit 14, the witness took up with the Judge Advocate General of the Navy [615—532] the matter discussed at that meeting; prior

(Testimony of John Keeler Robison.)

to that time he had talked with the Judge Advocate General on the subject, and had explained to him the object that witness had in view in transforming the leak of oil from the reserves into fuel oil in storage at Pearl Harbor and had obtained from the Judge Advocate General an informal, by which he means oral, opinion that the project was correct and legal; after the meeting of the 29th, at which Admiral Latimer, the Judge Advocate General, was present, witness told the Judge Advocate General, in letter dated November 30, 1921, two letters, one of which is Exhibit "A," with the stipulation regarding the opinions of the Judge Advocate General's office, already included in this statement, and the other is now offered and received in evidence as Defendants' Exhibit "M4," dated November 30, 1921, and reading:

DEFENDANTS' EXHIBIT "M4."

"From: Bureau of Engineering.

To: Judge Advocate General.

Subject: Navy Petroleum Reserves — royalty oil from.

1. There is now accumulating for the account of the United States Navy royalty oil from Naval Petroleum Reserves Nos. 1 and 2 amounting to about 1,000 barrels daily. This amount is likely to increase in the near future.

2. Information is requested as to the legality of the proposed method of using this royalty oil to the advantage of the United States Navy. Can this oil

(Testimony of John Keeler Robison.)

be used on board ship? If so, at what price should it be expended? What appropriation should be debited?

J. K. ROBISON,
Chief of Bureau."

On December 5, 1921, the witness received from the Secretary of the Navy the formal opinion of the Judge Advocate General, dated December 2, 1921 (Exhibit No. "C" to aforesaid stipulation); there was a discussion in the Secretary's office among the Secretary, Admiral Latimer and the witness, on December 5, 1921, at which time the Secretary of the Navy formally approved the opinion of the Judge Advocate General, and affixed to the Judge Advocate General's opinion a request that that portion of it which he wished to put into execution—or an order to "Do this"; prior to the time that the Secretary [616—533] wrote these words in acknowledgment of that communication, there was a discussion engaged in by the Secretary, the witness and Admiral Latimer; the Secretary said he had gone over the opinion in detail; that he had approved it; that it seemed that it was necessary for us to go ahead without waste of time to the accomplishment of the Pearl Harbor project, and he told witness to prepare the necessary order from the Secretary to the witness to put that project into effect; witness said, "Mr. Secretary, there is no use of wasting that time. Just put on this opinion, 'O. K. E. D.,' right here, and that is all the order I need," and the Secretary thereupon wrote, "Ap-

(Testimony of John Keeler Robison.)

proved, 5th December, Edwin Denby," at the bottom, and put abreast the Pearl Harbor plan, "Do this. E. D., December 5, 1921"; that was a definite order upon which witness proceeded thereafter; as the Secretary was about to sign the Judge Advocate General's opinion, with his approval, witness said: "Wait a moment, Mr. Secretary. You realize that this is a pretty risky proposition, don't you?" The Secretary said, "Why?" Witness said, "Well, oil is something that no one can touch without risk." "Well," said the Secretary, "that is all right, Robison, but the way you put it you make it a matter of duty and I have got to sign it"; witness wanted to say that about the Secretary; he was that kind of a man.

After receiving the above order from Secretary Denby, witness took the subject up with the Bureau of Yards and Docks; the getting up of preliminary plans had been started nearly a year before; after the above instructions from Secretary Denby, witness does not know just what he told the Bureau of Yards and Docks; he told them to please go ahead and get the stuff out as fast as God would let them; he talked, at that time, to Captain Bakenhus, Acting Chief of the Bureau.

Witness testified that at a Navy Council meeting of [617—534] December 8, 1921, the subject of the Judge Advocate-General's opinion above referred to was a matter of discussion; thereupon there was offered and received in evidence the

minutes of that council meeting, Defendants' Exhibit "N4," reading as follows:

DEFENDANTS' EXHIBIT "N4."

"Extracts from Stenographic Minutes of Council Meeting, Thursday, December 8, 1921.

The Council met at 12:10 P. M.

Present: Secretary Denby, presiding.

Assistant Secretary Roosevelt.

Admiral Coontz.

Rear Admiral Washington.

Rear Admiral McVay.

Rear Admiral Robison.

Rear Admiral Taylor.

Captain Bakenhus, representing Yards and Docks.

Captain Leutze, representing Supplies & Accounts.

Rear Admiral Stiff.

General Neville, representing Marine Corps.

Rear Admiral Latimer.

Rear Admiral Moffett.

Rear Admiral Smith.

Captain Willard.

Commander Rowcliff.

No. 1. (Admiral Coontz brought up revised deficiency bill referring, *inter alia*, to fuel.

SECRETARY.—I am going to the Capitol this afternoon so as to arrange for a hearing

Admiral ROBISON.—The cost of oil is artificially

high owing to unexpired contracts to which our appropriation is still indebted. On the West Coast the current price of oil is higher than it was at the last reading. The best contract is \$1.50 up to \$1.90, when the old price was \$1.48.

.
No. 14. Admiral ROBISON.— on the subject of oil, the Judge Advocate General says it is legal to exchange fuel oil or royalties for storage oil and tanks for Pearl Harbor that for the information of the Department for use of royalty oil to establish them in the form of oil reserves, actual, where plans call for them. The immediate need is appropriation of those tanks for Pearl Harbor. From Yards and Docks I am in receipt of plans and general specifications showing storage. These are somewhat commercial but Navy standard practice. They will be duplicates of what we have already got. With your permission I will ask the Secretary of the Interior to do this but when it comes to actual execution of the contract it be referred to this Department for consideration and you to recommend to him an officer to inspect the work in process of construction.

SECRETARY.—That part we can take up with the Secretary of the Interior. I want the details of the report from the Secretary of the Interior before I take it up with the Appropriations Committee. I want it first.

Admiral ROBISON.—In the letter from Yards and Docks it is necessary to retain control of this

under the Navy Department. The contract by the Interior Department on naval reservation is a contractual relation rather than [618—535] an engineering question.

SECRETARY.—I never questioned there was the slightest illegality. The question, therefore, should not be raised.

Captain BAKENHUS.—I wrote that letter and I included recommendations. I was very doubtful if it was policy to do it without taking first up with Congress.

Admiral COONTZ.—It seems to me, Mr. Secretary, you have settled this. We should not come back with inspection or anything. Let us don't send back to Interior Department.

Admiral LATIMER.—I suggest you leave out (those) two sections.

Admiral COONTZ.—I suggest you re-cast that letter. . . .

SECRETARY.—Anything that goes to the Secretary of the Interior must go through me.

No. 15. Admiral ROBISON.—\$2,279,000 (has been) turned into the Treasury. \$500,000 of that we can use for the storing of oil prior to July 1, 1922. Don't expect to include anything in Pearl Harbor for we will cover that with something else. Hampton Roads cost \$20,000 a year. We may be able to finish up Yorktown where the money is needed. It is up to War Plans. I would like to invite attention that the State of California, with reference to bonuses and royalties on oil lands, is

(Testimony of John Keeler Robison.)

putting in a request to the Department of the Treasury as to the amounts of these royalties. It takes all but 10 per cent. It has been decided that that within the Naval Petroleum Reserves is not included. It has been repeatedly decided in our favor.

SECRETARY.—Draw a letter to the Secretary of the Treasury on that. . . .

ROOSEVELT.—Mr. Secretary, I think in going to Congress on this Naval Reserve for Admiral Robison to prepare a paper for you—

(a) What the naval reserve is, as designated, if possible; quote the phrase to show what it is.

(b) My next thought is they will want to know how much we want to store; then they will want the balance.

(c) What is the estimate we will get out of that particular field.

SECRETARY.—It will take some time

Admiral ROBISON.—I cannot answer b or c.

SECRETARY.—He gave it to me verbally.”

The letter discussed, as shown by the foregoing minutes, which was to be recast, was a letter prepared in the Bureau of Yards and Docks, giving the plans and specifications for a million and a half barrel Pearl Harbor storage plant; it was addressed to the Secretary of the Interior, and was to be signed by the Secretary of the Navy, which is the general practice of the office, to do that way; inter-department correspondence is almost always signed by the head of the executive department; the letter of De-

(Testimony of John Keeler Robison.)

cember 9, 1921, as sent [619—536] out, signed by the acting Secretary of the Navy, is the same as the draft discussed at the Navy Council meeting, with the exception of a couple of paragraphs that were cut out; there may have been some re-arrangement of words or language, but the draft of December 8, under consideration at the meeting, differed from the one that was sent out on December 9, only in that there was eliminated from the one sent any question that witness felt and the Secretary felt had been solved finally so far as the Navy Department went, by the approval of the Judge Advocate General's opinion of December 2; he cannot recall definitely what the language which was the subject of discussion at the Navy meeting was, but to the best of his recollection it was to the effect that better contractual terms might be obtained if Congress would pass a new law definitely setting forth in more exact terms than the existing law the power of the Navy Department to do what it intended to do.

It was that letter that the order was given to re-cast; that matter had been determined, so far as the Navy Department was concerned; when re-cast, the letter became the one dated December 9, 1921, from the Acting Secretary of the Navy, Mr. Roosevelt, to the Secretary of the Interior (Exhibit No. 62); that letter was drafted in the Bureau of Yards and Docks, and passed through the hands of the witness, on its way to the Secretary for signature.

Admiral Robison had a conversation over the tele-

(Testimony of John Keeler Robison.)

phone with Acting Secretary Finney of the Department of the Interior, which conversation is referred to in Mr. Finney's letter of December 13, 1921 (Exhibit No. 63), in which he told Judge Finney that the Navy Department wanted to go ahead with the Pearl Harbor project upon terms similar to those finally actually accomplished in the Pearl Harbor contract; that the Navy would not thereafter want to use any of the royalty oil for current uses, [620—537] and that the Judge Advocate-General, which includes the solicitor's department in the Navy Department, had rendered an opinion that this would be a legal procedure; having called Admiral Robison's attention to the fact that the Navy Department had written to the Interior Department several kinds of letters, asking for current use segregation and exchange to fuel oil of the royalties from the Pacific Coast, and said that he would like to have the matter straightened out, and he wrote for it; the witness drafted letter to the Secretary of the Interior, signed by Secretary Denby, dated December 14, 1921 (Exhibit 66); he was present when Secretary Denby signed it; as to whether he had any talk with Secretary Denby before that letter was sent down to the Interior Department, witness had talks with the Secretary so frequently that he cannot state definitely that he talked this particular thing—yes, he can; there was nothing that he did not talk over, so he must have talked over this. As regards Secretary Denby's custom with regard to signing letters placed before

(Testimony of John Keeler Robison.)

him, he never let any of them go through without knowing what was in them.

There was then identified and introduced in evidence, as Defendants' Exhibit "O4," letter dated December 6, 1921, from the Bureau of Engineering to the Bureau of Supplies and Accounts, reading:

DEFENDANTS' EXHIBIT "O4."

"1. The estimated quantity of fuel oil to be obtained from the exchange of royalty crude oil for fuel oil during the period of 1 November 1921-1 July 1922, is 500,000 barrels. The department has decided that royalty oil will be held in storage.

2. In the event that it is decided to use some or all of this fuel oil for current needs the Bureau of Supplies and Accounts will be promptly advised to that effect.

J. K. ROBISON,
Chief of Bureau."

As to the announcement by Secretary Denby to the witness of decision with regard to the use of fuel oil obtained in exchange for royalty crude, or the storage of that oil, on December 5, Secretary Denby determined that the entire royalty [621-538] oil should be used to pay for the Pearl Harbor contract, and not for current use, and so stated; on November 29 he stated the policy as set forth in the November council minutes of that date, already read; outside of council meetings, the Secretary talked and the witness talked about what the "subterfuge" would be; they had exactly the same

(Testimony of John Keeler Robison.)

opinion, and which one expressed it, he did not know, but the discussion was this: There were people in the Department who desired the use of this oil to satisfy current needs of the Navy; Admiral Robison objected to that to the Secretary and the Secretary sustained those objections upon the ground that, first, the appropriations for the current use of the Navy were, by an announced policy of the administration of President Harding, to be lived within without creating deficits, and to use for the current needs the reserve oil would be exactly the same thing as to use the money, witness felt, and Mr. Denby agreed with him; also witness argued, and Mr. Denby argued, that the original purpose of the Naval reserves was to establish an emergency supply of oil for the Navy; obviously, if they used the oil, it would not be available for any emergency, and no lack of sufficient oil to accomplish some combined maneuvers, witness argued, was a genuine national emergency.

Prior to the commencement of the first Pearl Harbor project, the Navy Department had no above ground storage facilities for naval reserve oil, or that gotten in exchange for naval reserve oil, for future, reserve use; they had a certain amount of oil storage facilities for current naval uses, but no oil storage facilities for a genuine military reserve.

After the correspondence which took place between December 9th and 21st, between the Navy Department and the Interior Department, and prior to the time when Director Bain left Washing-

(Testimony of John Keeler Robison.)

ton for the Pacific Coast, the witness saw Secretary [622—539] Finney, in the latter's office, a couple of times; he saw Director Bain more often than that; Bain left Washington some time before the end of December, 1921, to present the proposition to prospective bidders; witness does not remember their talking over the companies Bain was going to present the project to, but thinks that it was agreed that he was to present it to as many of the big oil companies as he could, they being obviously the only people that could accomplish the project; witness had provided Bain with extra copies of the general specifications in their then state before Bain left; Admiral Robison does not recall accurately the time of his first meeting with Dunn of the White Engineering Corporation, but does not think he met Dunn until January.

At the November council meeting, on November 29, when witness had Mr. Doheny's letter to Mr. Fall of November 28, and Mr. Fall's to witness on November 29, witness said he announced that he was going to look into the matter and see whether the tanks referred to in Mr. Doheny's letter were specification tanks; subsequent to that time, he did nothing with reference to that letter; no action was ever taken in the way of accepting that proposition, or any official action on that proposition; as regards any talk on the subject of the November 28th letter with Dr. Bain, he thinks that occurred only to the extent of saying "We could not take any such proposition as that," and let it drop at

(Testimony of John Keeler Robison.)

once; witness thinks that is the only conversation he had with Dr. Bain or anyone else on the subject; he does not mean to say that the matter was not thought of; he means that would not accomplish what the department was after.

In the month of December, 1921, Admiral Robison talked with Mr. Doheny, Jr., and Mr. Doheny, Sr., talking with the young man first; he visited witness in the latter's office in Washington, November 12, 1921; the subject of his visit [623—540] was to request the Admiral to exert himself on behalf of a former shipmate of both of them, who was then a naval reserve officer, and had some disagreement or other with some regular officer; Doheny, Jr., did not come to see witness about any oil matter; after Doheny, Jr., had discussed with Admiral Robison the subject which the young man came to see him about, Admiral Robison brought up oil matters; he did not tell Doheny, Jr., anything about the details of the Pearl Harbor plan, but did tell him about the evaporation of the Naval assets, and witness' feeling of all but helplessness at the situation, his almost complete inability to accomplish the retention for the Navy of this oil, and he told young Doheny that he thought it would be possible to arrange some means of exchange by which the crude oil could be made fuel oil in storage, where the Navy wanted it; he discussed the drainage situation in general and told Doheny, Jr., the conclusions he, Admiral Robison, had come to at that time regarding the danger and the extent

(Testimony of John Keeler Robison.)

of the drainage of the property, and said that he really would like to know whether he was right or not, and requested Doheny, Jr., to ask his father to help him out and give him some advice in the matter; young Doheny dined with the Admiral at the latter's home in Washington, the night of December 12, and he talked on the subject of oil; the talk narrated above occurred at that time, there being present young Doheny, Mrs. Robison and the Admiral. So far as he remembers, he did not ask Doheny, Jr., anything about the cost of storage or contract for storage at Pearl Harbor.

The witness produced the original of letter dated December 14, 1921, and, reading the same, testified that it referred to the conversation in his home, which conversation he does not remember in detail, but has given in substance; he has a vivid recollection of his interview with "Ned" and the result of it, that result being the interview with his father; referring to [624—541] the statement in the said mentioned letter of December 14, that "My father will probably be in Washington on Saturday, and you might take advantage of that fact to have a chat with him as I suggested," Admiral Robison saw Doheny, Sr., at the end of that week, or the beginning of the next, in the Admiral's office in Washington, and then talked with him about the plan for the Pearl Harbor project; this was a long conversation lasting at least an hour and a half; witness first told Mr. Doheny what the witness believed concerning the Naval re-

(Testimony of John Keeler Robison.)

erves, as to drainage; he told him that he feared that "our property was getting away from us"; that witness was personally responsible for the preservation of that property to the Government, in the first place, and to the Navy in the second, and that the Government was not getting its share, and the Navy was not getting anything; that witness thought the Government would have to go ahead with the drilling of a lot of wells, in fact the complete drilling of No. 2 reserve and the drilling of a considerable number of wells in No. 1 reserve, in order that the trust could be executed; Mr. Doheny agreed with the Admiral; he also told Doheny of the plan for the use of the oil for current naval needs, and how he had fought it, and beaten it, for the purpose of making it available in Pearl Harbor, to accomplish the prevention of the possibility of the invasion of the west coast of the United States. "And I talked to him about what war is like; not in terms of dead men, but in terms of shame, and I told him that it couldn't be done except by the exchange of crude oil, and I appealed to him to help in the accomplishment of the security of this part of the country. I tried to show him that it would not involve any risk to him."

"I told him that he couldn't furnish us any real facilities that would cost him money without sooner or later his getting the money back from the Government, even if he didn't get the oil back out of the ground." "I told him the thing [625—542] involved was so great as to involve the security of

(Testimony of John Keeler Robison.)

this country." The witness was asked, without repeating it in court, to state whether he told Mr. Doheny anything about the necessity for action, and answered: "Oh, yes; but I didn't give him all the information I had, by any means. But when I had got him interested I kept on because I wanted to be sure I could get the job done, and I didn't let him go until he, with red eyes and a white face, said, 'Well, Admiral, go ahead; you can depend upon it you will get one bid.' I stopped right then, but he went on and he said, 'And what is more, I will tell you, Admiral, if you get a bid from me, or from my company, it will be one that won't involve one cent of profit to me.' That was the end of that conversation."

Prior to the time that there was made the statement just testified to, Mr. Doheny had said to the witness that he had already considered the project, but that his people were against it; that they had some interests out here in California but no such considerable interests as they would have to create in order to go ahead with the proposition, and that he had made up his mind to turn it down; witness does not recall seeing Mr. Doheny again, either late in 1921 or early in 1922.

Admiral Robison had visited the home of Edward L. Doheny, Jr., in New York City, but his records indicate that that visit was in the fall of 1922, and he does not think he had visited there prior to the fall of 1922; the visit he refers to was purely social.

(Testimony of John Keeler Robison.)

Admiral Robison saw Dr. Bain after he returned to Washington in January, 1922, at which time Dr. Bain reported to him; he was not present when Dr. Bain made any report of what had been accomplished by the trip to the West, except the report that Bain made to the witness; Dr. Bain told witness that several bids would be received; that he had seen the heads of the Standard Oil Company of California, the Associated Oil [626—543] Company, the General Petroleum Company, and he may have said that he had seen the Pan American officials, too, but witness does not know; witness had told Bain that Mr. Doheny had promised that there would be one bid from the Pan American, or had told that to Mr. Fall, he is not sure which; he informed Secretary Fall of Mr. Doheny's statement practically as soon as he got the word; the testimony shows that Mr. Fall was out of Washington all of December, and until late in January; witness may have told Mr. Finney, of course; witness did not write to Secretary Fall; he never had any correspondence with Secretary Fall, except the official correspondence in the record, and never had any communication of any kind with Secretary Fall while the latter was at Three Rivers, New Mexico; Admiral Robison does not remember whether he was present at the conference between Secretary Finney, Dr. Bain and Mr. Fall, held in January or early in February, 1922; he recalls knowing that the matter was going ahead, and knowing that Secretary Fall had given instruc-

(Testimony of John Keeler Robison.)

tions, but as to whether they had been given to Secretary Finney, Mr. Bain or Mr. Ambrose all at once, he does not know, and does not recall any conference at that time where they were all present at once.

Admiral Robison was in contact with Dr. Bain when the latter, in February, 1922, sent out the first invitation for proposals on the first Pearl Harbor project; at that time witness was handling that matter with Dr. Bain in the Interior Department; witness repeats what he has already said in his testimony, when he says "Bain," it might have been that he saw Ambrose; in short, it was the Bureau of Mines. Witness received Admiral Gregory's memorandum, Exhibit 79, in opposition to a cost-plus-plan of contract, and tried to quiet Admiral Gregory's fears in the matter, as set forth in that memorandum, at the same time assuring Admiral Gregory that his objections [627—544] would be satisfied; he went to Gregory and talked the matter over, and argued to him the advantages in the case of the Pearl Harbor project, where data was lacking concerning certain engineering details of a cost-plus and fixed-fee proposition; Admiral Gregory argued to the witness the disadvantages as ascertained by the recent war experiences in connection with cost-plus contracts. Witness talked the matter over with Dr. Bain and Secretary Fall, and, he thinks, with Secretary Finney. He does not remember what was said to Secretary Fall about Admiral Gregory's position on this subject,

(Testimony of John Keeler Robison.)

not even in substance; this was a matter that was vitally important to the Yards and Docks, and as to which Admiral Gregory was a good witness; it was a matter that Admiral Robison paid very close attention to; he morally supported Admiral Gregory's contention with anybody outside of the Navy Department, with the Interior Department; when he took up Admiral Gregory's position with Secretary Fall, witness supported it; Admiral Gregory and Admiral Robison both talked to Secretary Fall, but the witness' recollection regarding that conversation is too fragmentary to make it possible for him to testify regarding it, as Admiral Gregory was the important man in that matter, and the witness was not; witness cannot recall any conversation with Mr. Finney on the subject, though one might have occurred; witness knows of the revision in the call for bids dated December 17, 1922, and the receiving of letter addressed to him, dated February 24, 1922, and of the telegram therein referred to, which letter, as Exhibit "P4," was read in evidence as follows:

DEFENDANTS' EXHIBIT "P4."

"My dear Admiral:

I wired you today as follows: 'Confirming our conversation, Mr. Dunn and I will call upon you Monday morning at nine thirty.'

I am enclosing a copy of a letter, which I have

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(Testimony of John Keeler Robison.)

the promise that he had gotten from Mr. Doheny would be kept, and that under the circumstances he figured that the loss of time, which was vital, was unnecessary; that it would pay to wait three days before taking any action on Secretary Fall's letter, and then if there was not received any bids, that would be time enough to act, but if bids were received, why, this pessimistic view of the situation would be shown to be pessimistic; the Navy Department did not take any action on Secretary Fall's letter of April 12, 1922, and witness presumes it was placed in his files.

On April 15, 1922, witness learned by telephone from Dr. Bain the substance of the bids upon that day; Bain congratulated the Department of the Navy on the fact that there had been gotten several good bids; he said that he did not know at the time what conditions were attached to them, but they were all of them pretty reasonably close to the Navy's estimate, and that "we were in luck" or words to that effect; that, in [630—547] substance, is what he said at the time of the first conversation about the bids; witness is not certain whether Dr. Bain gave him any figures over the telephone at that time or not, nor whether he stated who was the lowest bidder; he had not then examined the bids, to determine the conditions attached to them; subsequent to that telephone message, witness went into the matter of those bids with Dr. Bain, Mr. Ambrose and Judge Finney, and on April 17, 1922, saw Mr. Ambrose's analysis (Ex-

(Testimony of John Keeler Robison.)

hibit 119) in the Interior Department, and examined it; witness then went over it with Secretary Denby, and told Secretary Denby that he thought that the Pan American bid B was the best one for the Government to accept; he cannot state positively that he took a copy of Mr. Ambrose's analysis and recommendation to the Secretary of the Navy, but he can say that he did take to Mr. Denby every bit of information that he had; in addition, he said to Secretary Denby that he thought the Pan American bid B was the best one to accept; witness told the Secretary the reason why he made this recommendation was that that bid "saved us several hundred thousand dollars and didn't seem to me to cost us anything"; witness informed the Secretary of the Navy of the condition of Pan American bid B, as regards a preferential right to future leases, and told the Secretary that it did not seem to witness that a preferential right had any other price to the Government than the possible decrease by one in the number of bidders in some future contract; the preferential right condition was discussed between Secretary Denby and Admiral Robison, and Admiral Robison's idea of the preferential right, as he explained it to Mr. Denby, and the latter's idea as he explained it to the witness, was about as follows (he cannot give the exact language of this, which occurred two years ago, but in substance): In the first place, witness saw big the two or three or maybe five hundred thousand dollars that was

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(Testimony of John Keeler Robison.)

saved to the Government by [631—548] that bid B; that looked awfully big to witness at the time, and he explained that to Secretary Denby; showed him how instead of having a fixed price—or we got a lower fixed price which was a fixed price minus, a cost-minus contract. There was a definite immediate, considerable saving to the Government involved in bid B; that witness could see; and against that there was nothing except a preferential right to further leases on certain areas in No. 1 Reserve when the Navy should make up its mind it wanted to make such leases; there was no obligation to “us” to make the leases; Secretary Denby suggested that if the terms were not to “our” satisfaction, if “we” couldn’t negotiate satisfactory terms, “we” could always advertise, and it didn’t look to either the witness or Secretary Denby at the time that “we” had made a mistake in accepting bid B.

Admiral Robison was present when Secretary Finney dictated telegram of April 17, 1922, to Secretary Fall (Exhibit 120); that telegram stated the views of witness in the matter; the witness saw a copy of Secretary Fall’s reply, dated April 18, 1922 (Exhibit 121); prior to the time the letter of award, dated April 18, 1922 (Exhibit No. 122), signed by Secretary Finney, was sent to the Pan American Petroleum & Transport Company, witness had taken the matter up with Secretary Denby, that is, he had taken this matter up with Secretary Denby immediately to get the information concern-

(Testimony of John Keeler Robison.)

ing the different bids from Ambrose, and not between the time the telegram was received from Secretary Fall and the letter of award sent; Secretary Denby had instructed witness to go ahead with bid B, and the witness had informed Secretary Finney of that on April 17.

Witness identified Defendants' Exhibit "CC," as "A memorandum for the press for immediate release"; he had knowledge of that statement given to the press at the time it was issued, but he does not remember whether he dictated it or whether he [632—549] revised it after one of the subordinates prepared it; he thinks he dictated it and went over it and corrected the English, and then took it in to the Secretary and got his approval; it was approved by Secretary Denby before it was issued, on that day; witness never did one thing in this oil business without being approved by Secretary Denby first; Admiral Robison does not think he went over this press statement with the Interior Department; but that he did go over one given out by that Department concerning the Mammoth Company to which he added some information to the original draft.

After the notification to the Pan American Company, dated April 18, 1922 (Exhibit No. 122), was sent, witness was present at conference when there was discussed the subject of making the Secretary of Navy a party to the contract, and of giving the Pan American Company some assurance that some definite pieces would be leased under the preferen-

(Testimony of John Keeler Robison.)

tial right clause; Mr. Cotter brought up the question of the Secretary of the Navy being a party in and to the contract, saying that the company had to have the Secretary of the Navy as a party to the contract; that it might be that the Advocate-General was all right, or it might be that he was not, and he, Cotter, wanted to be assured; witness thinks that the executive order of May 25, 1922, was mentioned, Cotter said that the opinion of our Judge Advocate-General and the executive order might both be perfectly legal, but he wanted to be sure; Admiral Robison told Secretary Denby of Mr. Cotter's request, and the Secretary said that it was all right; that he did not know that it made any difference; that he was perfectly willing.

Mr. Cotter also brought up the subject, in conferences between April 18 and April 25, with regard to the Pan American Company's assurance that it would be given a lease to some specified land; Cotter said then, witness thinks, that he [633—550] wished the Government would not accept bid B; that as near as he could see, his company was giving the Government some money, and not getting anything for it at all; he did not say that he wanted bid A accepted, but he said he wished the Government had not accepted bid B; there was not any urging, but "after our decision was made to take bid B," he said he thought "we" had done wisely; that his company had lost on it; he asked that he have something to show to his company to show that he was on the job, that he have a little strip of land

(Testimony of John Keeler Robison.)

to show to them as a lease that would show that it had gotten something out of this alternate bid; it is witness' recollection that at the time there was pending in the Interior Department a plea, which witness had ridiculed, from the Pan American Company, asking for a decrease in royalties from these strip wells of 55½ per cent; at this, witness laughed; he was sorry they had lost money, if they had, and it was at that time, as he recalls it, "that we gave them the additional portion of Section 1."

The witness is familiar with the letter dated April 25, 1922, signed by Acting Secretary Finney and Secretary of the Navy Denby, Exhibit "E" to Amended Bill of Complaint; as to discussion on that subject between witness and anybody in the Interior Department, Dr. Bain told the witness he thought "we might as well give it to them if they wanted it very badly, because we ought to do it for the protection of our property," against drainage by outsiders; the land in Section 35 was being drilled up by the Pacific Oil Company; the witness is familiar with the restrictive agreement between the Government and the Pacific Oil Company, providing against drilling in certain sections except after six months' notice, the restricted area including Section 32 and 33 and all lands within one-half mile of those sections.

Before the contract of April 25, 1922, was formally [634—551] executed, Admiral Robison had a draft thereof, which he got from the Interior De-

(Testimony of John Keeler Robison.)

partment, and took to Secretary Denby; the Admiral and Secretary Denby read over that draft, made several changes in it which were made by both of them together, and which consisted of about a half dozen changes in phraseology; this was done by taking a pencil and scratching out a phrase, or inserting a phrase, as the case might be; there were no material changes made; prior to the witness taking that draft to Secretary Denby, Mr. Nagel, the solicitor of the Navy Department, went over the draft with Admiral Robison, in the latter's office; the witness had his advice. After Secretary Denby and the witness went over this draft and indicated on it changes in the phraseology, as above testified to, Secretary Denby said, respecting the draft of the contract, "It is all right; go ahead and put it through," or words to that effect; thereupon witness took it back to the Interior Department, where he saw Bain, Ambrose and Finney; he thinks he took it to Secretary Finney, and that the latter sent for Dr. Bain, and said, in substance: "Here is what they want. Is it all right? Put it through," and that is the way it was done.

Witness does not recall having known at the time that Mr. Ambrose left for Three Rivers, New Mexico, on April 20, 1922, carrying certain documents and information; witness did not give Ambrose any instructions, or requests, before Ambrose left; Ambrose was not going on any of witness' business. Witness did not communicate to Secretary Fall by Mr. Ambrose, nor did he send the Secre-

(Testimony of John Keeler Robison.)

tary any message about the Pan American Contract through Ambrose, nor send Secretary Fall anything, then or ever, by Ambrose or anybody.

Prior to the time when Secretary Fall left Washington on April 13, 1922, he did not say anything to Admiral Robison [635—552] about who this contract was to be awarded to, nor did anyone in the Interior Department say anything to him prior to that time about who this contract would be awarded to.

Witness does not remember whether he was present when Acting Secretary Finney signed the April 25, 1922, contract (Exhibit "B" to Amended Bill of Complaint), but thinks he was; he took the final draft of the contract to Secretary Denby, and at the same time took to the Secretary the letter of April 25, 1922, which is Exhibit "E" to the Amended Bill of Complaint; they were both accomplished at the same time; he does not remember whether any representative of the Pan American Company was present when he took these papers to Secretary Denby, but Mr. Cotter may have been; so far as the knowledge of the witness goes, Mr. Denby had not met either Mr. Doheny, Sr., or Mr. Doheny, Jr., on April 20, 1922, but he does know that it was some six or seven months afterwards that he introduced Secretary Denby and Mr. Doheny, Sr. Secretary Denby did not read the contract over again, when it was presented by Admiral Robison to the Secretary for his signature; the Secretary asked the witness whether it included the

(Testimony of John Keeler Robison.)

changes that they had made, and witness pointed out to Secretary Denby the places where those changes had been made, and showed him that it was exactly what he wanted, and assured him that there were no other changes included therein; witness had gone over the contract in detail before presenting it to the Secretary; thereupon, the Secretary signed it.

Following the execution of this contract, the matter of carrying out the work of the Pearl Harbor project was a case then for the Bureau of Yards and Docks, the witness' work was done, practically; there were details that came to him, in certain other particulars, but in carrying out the execution of the project, the building of the tanks and the filling of them, that was for the Yards and Docks; the only place [636—553] witness figured in that was in the filling.

Witness identifies letter of May 5, 1922, signed by Acting Secretary Finney, and approved by Secretary Denby (Exhibit 129) and testifies regarding it that while he does not recall, he may have had some talk about that with Secretary Finney, but he did have a talk with Secretary Denby before the latter signed that exhibit, on the subject that he does recall, at which time he told Secretary Denby that "this would get us action quickest, and I didn't think it would do us any harm." In this conversation, that part of the May 5th letter that referred to the Secretary of the Interior appointing a successor to the Chief of the Bureau of Yards and

(Testimony of John Keeler Robison.)

Docks, in certain events, was discussed between Admiral Robison and Mr. Denby, it being one calling the other's attention (witness does not remember which) to the fact that orders to naval officers had to be signed by the Secretary of the Navy, and this was really nothing but verbiage; that it was all right until there was a disagreement, but if there was a disagreement the Secretary of the Navy was the man that had to agree in order that any officer could be assigned to the Navy Department; if there was anything that he did not really agree to, there was always the appeal to the Commander-in-Chief, the President; Admiral Robison and Secretary Denby talked that over, and it seemed that that satisfied the Interior Department, and did not hurt the Navy Department, and it expedited action to agree to it.

Witness does not recall having talked with Mr. Dunn of the White Engineering Company about this May 5, 1922, letter.

Witness cannot tell just when, after the contract of April 25, 1922, was signed, there arose in the Navy Department the question of finding more oil storage facilities at Pearl Harbor than were covered by that contract; something of that [637—554] sort must have come up in 1922, because there were instructions given by the Secretary of the Navy in the fall of 1922, increasing the quantities and establishing the new limit as to the proper amount for that locality; before the Secretary of the Navy approved recommendations or issued orders increas-

(Testimony of John Keeler Robison.)

ing the amount of fuel to be stored at Pearl Harbor, the matter had been the subject of conference in the Navy Department, in which Admiral Robison took part. About May, 1922, Admiral Robison called the attention of those responsible for adequate preparation of our Navy for active service to the fact that our entire reserve of petroleum products up to that time had consisted, aside from those we required for current use, in fuel oil, and to that were added other petroleum products, such as lubricants and gasoline and Diesel oil. He invited also the attention of the head of the war plans section to the desirability, the necessity, if witness' computations were correct, of a complete study of their logistic requirements. This was done, and the result of it was an increase in the amount of fuel oil set to be carried in Pearl Harbor. In this connection, there was discussed the question how long, in the event the Navy was called into active service on the Pacific, 1,500,000 barrels of oil would last the fleet; these discussions took place in the spring of 1922; as regards whether the increase of quantity of fuel oil to be carried in reserve storage at Pearl Harbor, above testified to, was an increase up to 625,000 tons, the witness testifies that the second contract (December 11, 1922) exactly accomplishes, in connection with the first, the requirements of the Navy's plan, no more and no less.

Thereupon, the witness identified, and there was offered in evidence on behalf of defendants, a communication by the Secretary of the Navy to the

(Testimony of John Keeler Robison.)

Secretary of the Interior, dated September 26, 1922, as regards which the witness testified [638—555] that it contained certain figures that ought not to be made public, and it was stipulated by counsel for the plaintiff and for the defendants that the said figures were not necessary for an understanding of the figures made in said letter, and were not material to the issues in this case, and that the substance of such communication, and not the entire document, should be read in evidence. The said communication as shown by the symbols thereon, was prepared in that part of the Navy Department known as "Operations"; it is addressed to the Secretary of the Interior, and bears the signature of Edwin Denby, and in substance states that the Navy Department is anxious to obtain certain information relative to the production and delivery of petroleum products, and that the Interior Department is requested to furnish this information by answering the questions based upon certain assumptions with regard to operations of the Naval fleet during stated periods, requiring stated quantities of fuel oil and other petroleum products. The letter then proceeds to propound the following questions:

"(1). Can the quantity of petroleum products indicated in assumption 'a' be delivered on the dates indicated without using sea transportation at tide-water on the Pacific Coast from the United States fields only without disturbing harmfully other essential war time consumers?

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(Testimony of John Keeler Robison.)

(2). Can these requirements be met solely from the West Coast fields?

(3). If not, what field would furnish these requirements and in about what quantity?

(4). Also in that event what means of overland transportation would be used during each of the months indicated in assumption 'a' and what percentage of each monthly delivery would each means carry?

Your cooperation in this matter, Mr. Secretary, will be appreciated. I hope you will consider the contents of this letter as secret."

It was stipulated that the foregoing communication, dated September 26, 1922, as a whole, stated an inquiry from the Navy Department, to the Interior Department, Bureau of Mines, as to what commercial supply of petroleum products there was around the Pacific Coast, so that if the Navy Department needed to obtain the same from private consumers, [639—556] it would know the sources.

On November 22, 1922, witness sent to the Bureau of Yards and Docks a communication which is Exhibit 165, prior to which time he had seen the Secretary of the Navy's approval of the increase in the amount of reserve fuel to be held at Pearl Harbor; before sending the communication to the Bureau of Yards and Docks, witness had received from Mr. E. L. Doheny the memorandum on the subject of the California oil situation, and had discussed the contents thereof with Dr. Bain, of the

(Testimony of John Keeler Robison.)

Bureau of Mines. Witness identifies memorandum which is Plaintiff's Exhibit 157, which he stated was the subject of a talk between Dr. Bain and himself in the latter part of October, 1922, and that after that talk, witness, in the latter part of that month, had a talk with Mr. Doheny, Sr., in the office of witness, in the Navy Department at Washington; that talk took place October 27, 1922, and immediately it was concluded, the witness dictated memorandum regarding it, which he used so as to fix what took place in his mind, and which he also used to enable him to be sure that he told Secretary Denby the whole story, after which he made that memorandum a part of the Navy Department's files; he dictated this memorandum immediately after his conversation with Mr. Doheny; said memorandum was thereupon offered and received in evidence as Defendants' Exhibit "R4," and reads as follows:

DEFENDANTS' EXHIBIT "R4."

"Bureau of Engineering — October 27, 1922 — Dictated by Rear Admiral J. K. ROBISON.

Memorandum for regular files:

Mr E. L. Doheny, President of the Pan American Petroleum Company, called on me this day. His Company is erecting a fuel oil storage at Pearl Harbor, on conditions that imply the prior right of the Pan American Company to further development within the Naval Petroleum Reserves Nos. 1 and 2. Mr. Doheny is the producer of about

eleven thousand barrels per day of crude petroleum in California. The present price of crude in California has fallen to sixty cents a barrel, from \$1.10. This has the effect, so far as the Government is concerned, of cutting the value of our royalty oil in half. Our interests are the same as those of the Pan American Company. The price of refined oils has not fallen perceptibly [640—557] in California. The reduction in price of fuel oil has been very little. The ratio between present prices of crude and certain kind of petroleum products has decreased. There is talk of further reduction in price of crude, in California, to about thirty cents a barrel. The object of this reduction, as stated by the refiners, is to establish a parity between production and consumption. This will involve a stopping of all development, and the closing of many wells. Our own wells, on the Naval Reserves, have been decreased in output by as much as 5,000 barrels a day. The present average royalty from these wells being 31 per cent (figure furnished by the Department of the Interior), the Government is now losing around 1500 barrels a day. Our present royalties are not far from 11,000, a year. It will take us about twice as long to pay for the Pearl Harbor development as would have been the case if there had been no cut in price of crude. Mr. Doheny believes that the cut in price of crude has already been excessive; that it should have, in no case, exceeded the cost of storage. He is prepared to furnish:

1,000,000 barrels of fuel oil, in storage, at San Francisco, to be available for naval use, on demand—maintenance cost to be paid by his own company; cost of delivery to tankers to be paid by his Company; and cost of transportation from our Reserves to tidewater, to be paid by his company.

Further, in case we desire to use fuel oil (procured from his company) to a greater extent than will be paid for by our approved royalties, he will guarantee the delivery of such oils at ten per cent below the market price.

In return for these concessions, he desires a lease, with authority to commence development as soon as he thinks it is necessary upon certain areas of our No. 1 Reserve not yet developed. These areas do not include that portion of our reserve that it will be profitable to leave in the ground.

The foregoing proposition is attractive to us. It does not measure by any means all that we can get. Mr. Doheny contemplates, by his own protection, the erection of a refinery, and the construction of pipe-lines from the naval reserve to the refinery. In order that this can be done safely, he requires an assured supply of crude oil. He is of the opinion that the mere announcement of the erection of the refinery, and of the entering of his company into the market for crude oil will increase the price of such crude so that the ratio between the price of crude oil which he, as well as the (Government?) produces, to the price of oil products, which have been produced in large part by the Standard Oil Company of California, will have

increased to the advantage of both himself and, incidentally, of course from his point of view, the Government.

I pointed out to Mr. Doheny that we would be unable to contract to purchase, over any period of time, naval requirements of fuel oil, or of any other products; but that there was nothing to prevent our acquiring the right to obtain such products as suggested by him, and with the price of ten per cent below the market rate. I further pointed out to Mr. Doheny that the general plan for the utilization of the naval reserve involves the transformation of our reserves of crude oil under ground into definite amounts of fuel oil and other crude oil products such as lubricating oil, located at strategic points, for naval use when as and if required. I suggested to him that his proposition would be of most [641—558] interest to us if it involved the maximum amount of fuel oil held in storage by him for our account. I invited his attention to the fact that, in addition to the stations on the Pacific Coast, his Company had various stations on the East Coast, viz.:

Galveston,
New Orleans,
Tampa,
Jacksonville,
Norfolk,
New York (Carteret, N. J.),
Providence, R. I.,
Portland, Me., and
Boston;

and that it would be very small expense to his company to provide, at each of these places, a certain amount of fuel oil in storage for the account of the Navy; and to guarantee the continued reservation for naval account. That such a guarantee would be of great value to us; that his project further, in order to become most attractive to the Navy Department, should include the supply of the maximum amount that he should furnish at these various points.

Mr. Doheny agreed in principle with my suggestion. The amount that he can supply at Carteret, N. J., may be made as large as one million barrels. Smaller amounts can be supplied at the other stations. He can supply a very considerable amount at Christobal, Canal Zone, where he has the land and where the supply will involve nothing more than the cost of the tanks. He can supply 100,000 barrels or more at each of the other points heretofore mentioned. I told him that this point would be of great value to us. Our success in handling the Naval Petroleum Reserve proposition, generally, is measured by the amount of reserve that it is possible to create. It seems to me probable that we can secure from the Pan American Company not less than four million barrels of storage in connection with this particular development, and that the cost to the Navy will be approximately nothing except that the Navy will be committed to that Company, definitely and finally, in connec-

tion with the development of certain portions of No. 1 Reserve in California.

I told Mr. Doheny that there were a good many details that I would want to look into, such as the rate of discharge that he could guarantee into the Navy tankers; and the depth (?) of water that could be carried to the points of loading for our tankers, or for other tankers engaged in the supply of our needs.

Mr. Doheny said that these details (seemed all right?) but was not able to furnish me with the specific information at this moment. Indeed, it would take a considerable time to do so; but that, within three or four days he would furnish me with a general memorandum, which memorandum was not to be taken as the final form in which it would be presented, but which was to be furnished me for suggestions by myself as to modifications therein that would enhance the attractiveness of his proposed contract with the Navy Department.

This proposition was originally brought to my attention by Secretary Fall, who is very favorably disposed toward it; but who desires to be sure that our interests are completely safeguarded, and that our [642—559] desires are accomplished to as great an extent as practicable.

From my own point of view, it appears that Mr. Doheny's proposition, while of course intended to defend his own interests that are now suffering to the extent of around \$5,000.00—a figure given by me, and subscribed to by him—is almost equally

(Testimony of John Keeler Robison.)

profitable to the Government as to the Pan American Company. Any increase in the value of our crude oil is directly to our interests, and if we can secure the erection of a reserve by commercial interests such reserve will be almost if not quite as definite an entity toward the national defense as if it were naval property. Further, the Navy would be excused from the payment of any maintenance charges in connection with this reserve. This would free our appropriation Fuel and Transportation from no inconsiderable charges.

From my point of view, therefore, the proposition appears sound—subject to the one condition, that the amount of fuel oil held in store by the Pan American Company should be made as great as we can possibly secure.”

Admiral Robison testifies that when “this proposition was originally brought to” his attention, “by Secretary Fall,” as stated in the foregoing memorandum, Secretary Fall told the witness that Mr. Doheny was much concerned over the state of the oil market in California, and had some sort of a proposition to advance looking toward the stabilization of prices that might be made to the Government’s advantage, as well as to his own; witness told Secretary Fall that anything that came “to our advantage” was of interest to witness and that is about all there is to it, because the witness was not furnished with any details; witness does not remember exactly what, if anything, Secretary Fall said with

(Testimony of John Keeler Robison.)

regard to the Navy's interests or part in that matter, but there was no question that it was a matter for Naval decision.

Admiral Robison identifies as having been received by him from Mr. Doheny letter dated November 6, 1922, Plaintiff's Exhibit No. 158, together with the memorandum enclosed therewith regarding the oil situation in California; that letter and memorandum was received by the witness through the mails; witness told Secretary Denby about it, but took no steps to put it into effect; there were other plans that it [643—560] was necessary that "we accomplish at that time, and the accomplishment of which had to be provided, namely, the plans for an extension of the Pearl Harbor capacity." At the time of the conversation of October 27, 1922, between Admiral Robison and Mr. Doheny, nothing was said by either with regard to an increase in Pearl Harbor project; the Pearl Harbor subject was not mentioned at all except in connection with so much thereof as was then under construction.

In the month of November, 1922, Mr. J. J. Cotter and Mr. J. C. Anderson, of the Pan American Company, came to the witness' office, Mr. Cotter introducing Mr. Anderson to the witness; they called about the 15th or 20th of November, 1922, and brought up the subject of Mr. Doheny's proposition, dated November 6, 1922 (Exhibit 158), and at that time witness told them of the Navy's need for about two and one-half million barrels more of oil in Pearl Harbor, and that he wanted everything

(Testimony of John Keeler Robison.)

that Mr. Doheny offered, and this additional two and one-half million barrels, together with storage facilities therefor. In the conversation, it is the recollection of the witness that he did not talk with Mr. Anderson or Mr. Cotter about leasing any part of the reserve, though he may have introduced that subject; the witness suggested ultimately, in that or in a subsequent conversation, that the lease of the entire No. 1 reserve, subject to retention "by us of that portion that we did not feel required drilling, for protection of the reserve property," and what might roughly be called the western half.

In the conversation with Mr. Doheny on October 27, 1922, nothing was said about leasing the entire reserve to the Pan American Company, and Mr. Doheny did not ask it, or suggest it.

Admiral Robison was the one who first mentioned the matter of making a lease of all of the naval reserve No. 1, [644—561] in connection with this extension of the Pearl Harbor project. Prior to the time when the witness suggested that action by the Government, neither Mr. Doheny nor anybody representing the Pan American Company, made any application for a lease of all of that reserve.

The letter dated November 28, 1922, from the Secretary of the Navy to the Secretary of the Interior, Plaintiff's Exhibit 166, which letter is attached to and made a part of the December 11, 1922, contract, was dictated by Admiral Robison; the letter is signed by Mr. Denby; witness took that letter in person to the Secretary of the Navy and went

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(Testimony of John Keeler Robison.)

over its subject with him before he signed it; prior to the time he dictated that letter, he had received information orally from the Secretary, of the approval of the quantities listed therein as additional facilities to be installed at Pearl Harbor; that information was oral; the figures had been confirmed by the witness, by personal application to the office where they had been compiled. The person that the witness received these oral instructions from was Mr. Denby, the Secretary of the Navy. Prior to the writing of the letter of November 29, 1922, witness may have told Secretary Fall that the Navy was going to ask for additional facilities at Pearl Harbor, but he does not think he did; Secretary Fall had not said anything to the witness, or asked him to get up that sort of an application; "This plan originated in the Navy Department and was based upon necessities."